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Report of the Committee appointed to consider the Racial Distinctions in criminal procedure applicable to Indians and non-Indians.

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REPORT OF THE COMMITTEE APPOINTED BY THE GOVERNMENT OF INDIA TO CONSIDER THE EXISTING RACIAL DISTINCTIONS IN THE CRIMINAL PROCEDURE APPLICABLE TO INDIANS AND NON-INDIANS AND TO REPORT TO THE GOVERNMENT OF INDIA THE MODIFICATIONS OF THE LAW WHICH THEY RECOMMEND SHOULD BE ADOPTED.

TO

HIS EXCELLENCY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

In accordance with the instructions contained in the Home Department Resolution no. F.-105-Judicial, dated the 27th December 1921, we, the members of the Committee appointed by the Government of India to consider the existing racial distinctions in the criminal procedure applicable to Indians and non-Indians, and to report to the Government of India the modifications of the law which we recommend should be adopted, have the honour to report for the information of Government our conclusions on the questions requiring examination.

2. In the second Session of the Legislative Assembly, in September 1921, Mr. N. M. Samarth moved a resolution on the subject. The resolution, after amendment, was passed in the following form :—

"That, in order to remove all racial distinctions between Indians and Europeans in the matter of their trial and punishment for offences, a Committee be appointed to consider what amendments should be made in those provisions in the Code of Criminal Procedure, 1898, which differentiate between Indians and European British subjects, Americans and Europeans who are not British subjects, in criminal trials and proceedings and to report on the best methods of giving effect to their proposals."

3. Accordingly the Government of India issued a resolution, which, after detailing the resolution passed by the Assembly, proceeded as follows :—

"The Governor General in Council has already accepted the principle that it is desirable that there should be equality of status for all people in this country in the matter of criminal trials and proceedings, and has decided to appoint a Committee to consider the existing racial distinctions in the criminal procedure applicable to Indians and non-Indians, and to report to the Government of India the modifications of the law which they recommend should be adopted.

The Hon'ble Dr. Tej Bahadur Sapru, LL.D., Law Member of the Governor General's Council, has consented to preside over the Committee, and the following have agreed to serve as members :—

1. The Hon'ble Sir William Vincent, Kt., K.C.S.I., Home Member of the Governor General's Council.
2. Mr. S. R. Das, Standing Counsel, Bengal.
3. The Hon'ble Mr. Justice Shah, Kt., Judge of the High Court of Judicature, Bombay.
4. Mr. P. E. Percival, I.C.S., M.L.A.
5. Rao Bahadur Tiruvenkata Rangachariar, M.L.A.
6. Mr. Narayan Madhav Samarth, M.L.A.
7. Mr. W. L. Carey, a member of the Bengal Legislative Council.
8. Mr. Abul Kasim, M.L.A.
9. Dr. H. S. Gour, M.L.A.
10. Mr. Saiyid Sultan Ahmad, Government Advocate, Bihar and Orissa.
11. Rai Bahadur Lalit Mohan Banarji, Government Advocate, Allahabad.
12. Mr. E. Stuart Roffey, Solicitor, Dibrugarh, Assam.
13. Mr. W. Muir Masson, Punjab.
14. Mr. F. McCarthy, M.L.A.
15. Lieutenant-Colonel H. A. J. Gidney, M.L.A.

Mr. Percival will, in addition to his duties as a member of the Committee, act as Secretary.

The Committee, which will submit its report to the Government of India, will assemble at Delhi on the 5th January 1922. It will conduct its enquiries in public, but any part of its proceedings may be conducted *in camera* if the President considers such a course desirable in the public interest. Persons who desire to be called as witnesses should apply in writing to the Secretary, care of Home Department, Government of India, Delhi, giving their full names and

addresses together with a brief memorandum of the points in regard to which they desire to give evidence. It will of course rest with the Committee to decide what evidence they will hear."

Mr. T. C. P. Gibbons, K.C., Barrister-at-Law, Advocate-General, Bengal, was subsequently added as a member of the Committee.

4. The origin of the privileges in question can probably be traced to the jealousy with which in the eighteenth century and later the jurisdiction of the Courts of the Hon'ble East India Company over Europeans was regarded. For a long time the Courts of the Company exercised no such jurisdiction at all, the administration of civil and criminal justice in India being confined in such cases to the Courts of the presidency towns. The system was undoubtedly based on the idea that the Crown from the earliest introduction of its subjects into India provided for the administration of justice among them a system analogous to that which existed in England. Moreover previous to 1833 British subjects, not in the service of the Crown or Company, were not allowed to reside at a distance of more than ten miles from a presidency town without special permission. On the repeal of this provision, the Court of Directors in 1834 gave instructions that British-born subjects should be subjected to the same tribunals as Indians. They observed that :—

"The 85th clause of the Charter Act of 1833, after reciting that the removal of restriction on the intercourse of Europeans with the country will render it necessary to provide against any mischiefs or dangers that may thence arise, proceeds to direct that you shall make laws for the protection of the Natives from insult and outrage—an obligation which in our view you cannot possibly fulfil unless you render both Natives and Europeans subject to the same judicial control. There can be no equality of protection where justice is not equally and on equal terms accessible to all."

Accordingly Europeans were made amenable to the Civil Courts outside the presidency towns in 1836 by an Act associated with the name of Lord Macaulay. The question of the trial of Europeans by all the criminal courts outside the presidency towns was raised in 1849 by the Government of Lord Dalhousie ; and again in 1857. It was decided, however, to await the introduction of the revised criminal law in such areas. The previous procedure therefore continued until 1861, that is to say, European British subjects resident outside the presidency towns were tried by the Supreme Courts which were stationed in the presidency towns, except in respect of certain minor offences for which they were triable by European Justices of the Peace. In 1861, the Supreme and Sudder Courts were combined into the High Courts of Judicature. English Judges were then enabled to go up-country and try cases against Europeans. Even up to 1872, however, the general principle was that criminal jurisdiction over European British subjects was exercised only by Courts established by the Crown and not by the Courts of the country.

5. In 1872, when Sir James Stephen was Law Member, the jurisdiction of the ordinary criminal courts was definitely extended to Europeans; but at the same time special forms of procedure based on English law and limitations of the powers of the courts were framed for their trial.

6. In 1883, the well-known Ilbert Bill was introduced with the object of giving jurisdiction to Indian Sessions Judges and certain Indian Magistrates to try European British subjects. Owing to the feeling aroused by the Bill, its scope was reduced, and a compromise was effected, a fresh Bill being introduced and passed as Act III of 1884. The main effect of the compromise was that, while Indian Sessions Judges and District Magistrates were enabled to try European British subjects, the right to claim a mixed jury, that is, a jury consisting of not less than half Europeans, was allowed in all Sessions cases (not merely in those triable by jury in the case of Indians) and also before District Magistrates. The provisions contained in that Act are still in force.

7. In the presidency towns European British subjects have had and have no privileges before the Presidency Magistrates, but they can claim a mixed jury before the High Court.

8. It is interesting to note that, whereas, at the time of the Ilbert Bill controversy, the question was whether Indian Judges and Magistrates should try

Europeans or not, the subject which excites most interest at the present moment is the right of a European British subject to claim a mixed jury.

9. Prior to 1882 the law provided that in the case of Europeans (not being European British subjects) and Americans in any trial before the Court of Session the accused had the right to be tried by a jury of which not less than half should consist of Europeans or Americans, if such a jury could be procured. By the Code of 1882 this right was retained only in respect of Sessions cases normally triable by jury ; while in cases triable with the aid of assessors it was provided that half the number of assessors, if practicable and if claimed, should be Europeans or Americans. This provision is still in force.

10. In anticipation of the examination of witnesses who appeared to give evidence before the Committee, the Government of India consulted local Governments on the question under examination. The Committee have also received and studied a large amount of important documentary evidence, including memoranda from all the chief European, Anglo-Indian, and Indian Associations, Chambers of Commerce and other leading associations in India. Appendix A to this report gives the names of the witnesses who gave evidence before the Committee, and also of those who were invited to give evidence before the Committee but who were unable to do so. We examined at considerable length the 26 witnesses, some of whom came from distant places at much personal inconvenience. They were from the following provinces : 6 from the United Provinces, 4 from Bengal, including 1 who also represented non-official Europeans in Assam, 4 from Madras, 3 each from Bombay, Bihar and Orissa and the Central Provinces, 2 from the Punjab, and 1 from Burma. They were distributed as follows : 13 Hindus, 7 Europeans, 4 Mohamedans, 1 Parsi and 1 Anglo-Indian. The witnesses were mostly leading members of the legal profession, who practise either in the High Courts or in the Mufassil, and we have had the benefit of their valuable experience. Every endeavour was made to ascertain public opinion, and, in order to secure the most competent witnesses in the country, invitations to give evidence were issued by the Government of India on three occasions, that is, in October, December, and January last. A statement of all the evidence placed before the Committee is given in Appendix B.

11. The most important provisions requiring examination are those contained in the Criminal Procedure Code, especially Chapter XXXIII and sections 4, 22, 111, 188, 275, 408, 416, 418 and 491 of that Code, together with section 65 (3) of the Government of India Act, section 56 of the Indian Penal Code, the Penal Servitude Act, XXIV of 1855, and the European Vagrancy Act, IX of 1874.

12.—*A*. The principal distinctions between the provisions relating to Indians and those relating to European British subjects are as follows :—

(*i*) By virtue of the provisions of section 443 of the Criminal Procedure Code, European British subjects are not triable by a second or a third class Magistrate and are only triable by a Magistrate of the first class if he is a Justice of the Peace and, save in the case of District and Presidency Magistrates, a European British subject.

(*ii*) The jurisdiction of Additional and Assistant Sessions Judges over European British subjects is restricted by section 444 of the Code to cases where they are themselves European British subjects and in the case of Assistant Sessions Judges to those who have been Assistant Sessions Judges for at least three years and have been specially empowered in this behalf by the local Government.

(*iii*) The sentences that may be awarded by first class Magistrates, District Magistrates and Courts of Session in the case of European British subjects are limited by sections 446 and 449 of the Code to three months' imprisonment and a fine of Rs. 1,000 ; six months' imprisonment and a fine of Rs. 2,000 ; and one year's imprisonment and unlimited fine, respectively.

(*iv*) In the case of trials before a High Court, Court of Session or District Magistrate, European British subjects are entitled by sections 450 and 451 of the Code to be tried by jury, of which not less than half shall be Europeans or Americans.

(*v*) Section 456 of the Code gives to European British subjects remedies in the nature of *habeas corpus* which are more extensive than those provided for Indians by Chapter XXXVII.

(*vi*) Under the provisions of sections 408 and 416 of the Code European British subjects have more extensive rights of appeal in criminal cases than Indians, in that they may appeal against sentences in which an appeal would not ordinarily lie; and they also have the option of appealing in the alternative to the High Court or to the Court of Session.

(*vii*) Under section 111 the provisions of the Code regarding the taking of security for good behaviour in sections 109 and 110 do not apply to European British subjects in cases where they may be dealt with under the European Vagrancy Act of 1874; and

(*viii*) The definition of High Court is not so wide in the case of European British subjects as it is in the case of Indians.

B. The only distinction between the provisions relating to Indians and those relating to Europeans (not being European British subjects) and Americans is that under the provisions of section 460 of the Code in every case triable by jury or with the aid of assessors, in which a European (not being a European British subject) or an American is an accused person, not less than half the number of jurors or assessors must, if practicable and if claimed, be Europeans or Americans.

13. To turn to the particular changes which are proposed :—

The first one is the *amendment of the definition of European British subject in section 4 (1) (i) of the Code.*—It is generally admitted that this is not a satisfactory definition; for instance it includes a non-European domiciled in Natal but not a European domiciled in East Africa. Having regard to all the facts we recommend that the definition of European British subject should be amended by striking out all the words in clause (*i*) of section 4 (1) (*i*) after the word Ireland, thus omitting all reference to the British Possessions or Dominions outside Great Britain and Ireland. If this alteration is made, there will still be a difference between the definition of European British subject in the Criminal Procedure Code and the wording of section 65 (3) of the Government of India Act, which runs as follows :—

"The Indian Legislature has not power, without the previous approval of the Secretary of State in Council, to make any law empowering any court, other than a high court, to sentence to the punishment of death any of His Majesty's subjects, born in Europe or the children of such subjects, or abolishing any high court."

We are of opinion, however, that the definition of European British subject should not be assimilated to this description in the Government of India Act. We recommend two additions to our proposed definition. The first is that subjects of His Majesty born, naturalised or domiciled in any of the European, American or Australian Possessions or Dominions of His Majesty or in New Zealand or in the Union of South Africa should be classed as European British subjects when they are actually serving in India in His Majesty's British Army, Navy or Air Force. The reason for this addition is that when such persons are transferred to India, they have no option. They are not in the same position as those who of their own free choice come to reside in India. The second addition that we recommend is that subjects of His Majesty born, naturalised or domiciled in any of the European, American or Australian Possessions or Dominions of His Majesty or in New Zealand or in the Union of South Africa who at the date of the adoption of our proposals are in His Majesty's Indian Army, Royal Indian Marine or Indian Air Force should be classed as European British subjects.

Both the proposed additions will affect only a comparatively small number of men. A minority of the Committee, including the Government members, are of opinion that no distinctions should be made between persons serving in the British Forces and those serving in the Indian Forces.

14. The next question is *the definition of High Court in section 4 (1) (j) of the Code* —We recommend that the definition of High Court should be the same in the

case of Europeans as in the case of Indians, the Secretary of State in Council being requested to give his previous approval to this change, having regard to the provisions of section 65 (3) of the Government of India Act. We are, however, of opinion that in regard to certain sections of the Criminal Procedure Code, only the Chartered High Courts, the Chief Court of Lower Burma and the Courts of the Judicial Commissioners of the Central Provinces, Oudh, Sind and Upper Burma should be included in the term " High Court."

Justices of the Peace for the mufassal.

15. *Section 22.*—We do not think it necessary to express any opinion on the question whether Justices of the Peace should be retained outside the presidency towns. We are, however, of opinion that whether the title is retained or not, it should not be a qualification for the trial of a European British subject. We are also of opinion that such appointments outside the presidency towns should not be restricted to Europeans. In regard to the trial of European British subjects generally we consider that outside the presidency towns the only distinction should be that the Magistrate in question, if the accused so desires, should not be below the rank of a first class Magistrate. We recognize that in this respect a slight distinction will still remain between European British subjects and Indians; but we believe that no objection will be taken on that account so far as offences punishable with imprisonment are concerned. We recommend, however, that offences punishable with fine not exceeding Rs. 50 only (and no other punishment) in respect of which a European is accused may be tried by any Magistrate having jurisdiction normally in respect of such offences.

Proviso as to European Vagrants.

16. *Section 111.*—We consider that this section should be repealed, and that sections 109 and 110 should apply equally to Europeans and Indians. But at the same time we recommend that the European Vagrancy Act, IX of 1874, should be retained, as it is required in connection with the deportation of undesirable Europeans.

The majority of the members of the Committee consider that an examination should be made of the question whether the period of three years prescribed in section 110, as the period for which imprisonment may be ordered in default of the production of suitable security, is not excessive. We are of opinion that the subject is one that deserves the attention of Government, and we venture to suggest that local Governments and High Courts should be consulted thereon.

Liability of British subjects for offences committed out of British India.

17. *Section 188.*—This section is in accordance with the provisions of the Government of India Act; no change is proposed.

Person charged outside presidency towns jointly with European British subject.

Section 214.—Amendments consequential on our proposals will be necessary.

Jury for trial of persons not Europeans or Americans before Court of Session.

Section 275.—The provision contained in this section should be extended to trials before the High Court—*vide* paragraph 24 below. Consequential amendments will be necessary.

Right of European British subjects to appeal to High Court or Court of Session.

18. *Section 408, proviso (a).*—We are of opinion that this proviso should be repealed.

Saving of restrictions on appeals from sentences on European British subjects.

19. *Sections 413, 414, 415 and 416.*—We recommend the repeal of section 416. We consider, however, that outside the presidency towns in the case of all persons, both European and Indian, there should be an appeal against any sentence of imprisonment passed by a Magistrate. This involves a substantial modification of the general law of the land, and will to a certain extent increase the work of the Sessions Courts. Nevertheless we are of opinion, on general grounds and apart from the particular case of the European British subject, that an appeal should lie against any such sentence. It is to be noted that short sentences of imprisonment should, where possible, be avoided; and the number of sentences of one month and under passed by District Magistrates and first class Magistrates should not, as far as we can

judge, be very large. In the case of a sentence passed in a trial by a Court of Session we would allow no appeal in respect of a sentence of one month or under. The question of an appeal in the case of sentences of imprisonment raises some difficulty in the case of summary trials. It has been suggested that, in order to meet this difficulty, all summary trials should be abolished. We are not, however, prepared to recommend such a serious change in the law of the land. We recommend instead that an appeal should lie against any sentence of imprisonment passed by a Magistrate trying a case summarily. Appeals lie even at present in certain cases against sentences passed in a summary trial; and section 264 of the Criminal Procedure Code deals with the record in such cases. Dr. Sapru and Sir William Vincent observe that the Government of India will ultimately be guided in a great measure by the opinions of local Governments and High Courts on the proposal to extend the right of appeal in the cases mentioned in this and in the next sub-paragraphs, as it may involve much increase in judicial labour.

We recommend no change in the provisions of section 413 in respect of appeals from sentences of fine only in ordinary cases, but we would in modification of section 414 permit a right of appeal from sentences of fine only which exceed Rs. 50 in summary cases.

We consider that public opinion should be invited as regards the punishment of whipping, in particular on the question whether the punishment should not be confined to persons convicted of any of the offences mentioned in section 4 of the Whipping Act, and also in the way of school discipline, to juvenile offenders. A minority of the Committee are in favour of the complete abolition of the punishment of whipping except in the case of juvenile offenders. A majority of the Committee consider that if after the proposed inquiry, the punishment of whipping is retained, it should apply to Europeans and Indians alike; that it should be provided for the same offences; and that the same classes of officers should have power to sentence to the punishment Europeans and Indians alike, subject always to the provisions of a right of appeal, even where the sentence is one of whipping only, and to the further provision that the execution of the sentence should be suspended pending the disposal of the appeal.

Appeal on what matters admissible.

20. *Section 418.*—We recommend that in all jury trials in which the jury are not unanimous, or in which the jury are unanimous but the Judge does not agree with the verdict of the jury, both in the High Court and in Sessions Courts, an appeal should lie on facts as well as on law both in the case of conviction and of acquittal (the appeal in the case of acquittal being by the local Government) in respect both of Europeans and Indians. This right should be specially laid down in the Code and should be as free and unrestricted as in the case of any other appeal. The appeal should be heard by three Judges in the case of an appeal from a decision in a High Court and by two Judges in the case of an appeal from a decision in a Sessions Court. Sections 418 and 423(2) should be amended accordingly. On this point we invite reference to the English Criminal Appeal Act of 1907. We recognize that this is an important alteration in the general law of the land, but we believe that it will receive considerable support from legal opinion in India. It has been pointed out to us that the English Act of 1907 does not recognize appeals against acquittals. But appeals against acquittals by the local Government form an integral part of the Indian Law; and it would not be logical to extend appeals on facts to certain jury cases only in respect of convictions and not in respect of acquittals, especially as the chief complaint made against juries is that they are too prone to acquit.

Dr. Sapru and Sir William Vincent observe that the Government of India will ultimately be guided by the opinions of the local Governments and High Courts on the proposals contained in this paragraph. Mr. Rangachariar is in favour of allowing such appeals only where a mixed jury has been claimed and only in the case of an acquittal.

Magistrates empowered in cases against European British subjects.

21. *Section 443.*—This section will require to be amended in the light of paragraph 15 above.

Judges in Courts of Session empowered in cases against European British subjects.

Section 444.—We consider that this section should be repealed.

Cognizance of offences committed by European British subjects.

Section 445.—Consequential amendments only.

22. *Section 446.*—In our opinion District Magistrates and first class Magistrates (whether empowered under section 30 or not) should not be allowed to pass on European British subjects any sentence other than a sentence of imprisonment which may extend to two years, including such solitary confinement as is authorized by law, or of fine which may extend to Rs. 1,000. It will be observed that these are the limits of the ordinary powers of a District or first class Magistrate with the exception that they do not include a sentence of whipping. This is subject to our previous observations in paragraph 19. The majority of the Committee are of opinion that sections 30 and 34 should be repealed, on the ground that a sentence of more than two years' imprisonment should not be passed without the assistance of a jury or assessors.

Sentences which may be passed by provincial magistrates.

Dr. Sapru and Sir William Vincent consider that the Government of India must ultimately be guided in a large measure by the opinions of the local Governments and the High Courts on the question whether it is practicable to repeal those sections. Some members of the Committee are of opinion that, if after inquiry it is decided to retain these sections, they should apply equally to Europeans and to Indians.

Commitment to be to the High Court in certain cases.

23. *Sections 447 and 448.*—These sections should be repealed.

24. *Section 449.*—We are of opinion that Sessions Courts should have power to pass the same sentences on Europeans as on Indians. Accordingly Sessions Judges and Additional Sessions Judges should have power to pass sentences of death, in the case of Europeans and Indians alike, subject as usual to confirmation by the High Court. This provision is to be read together with our proposal that there should be a mixed jury, that is, a jury of not less than half Europeans or Indians, as the case may be, in trials before the High Court and Sessions Court. In the very limited number of cases in the Sessions Court in which Europeans will be tried without a jury, they will be tried with European assessors. We develop this point later. We adopt the principle that a Sessions Judge or Magistrate should have power to pass the same sentence in the case of a European as of an Indian, and that safeguards should be obtained by other methods than by restricting the punishment which the presiding Judge or Magistrate can inflict. We recommend therefore that the Secretary of State in Council be requested to give his previous approval in accordance with section 65 (3) of the Government of India Act to this change in the law. As in the case of Magistrates, we make an exception in respect of the punishment of whipping.

Sentences which may be passed by a Court of Session.

25. *Section 450.*—The most difficult question for the Committee to decide is that of the trial by jury of European British subjects. This is the point on which non-official European opinion is most emphatic, namely, that it is essential that a mixed jury should be retained. We have decided accordingly that the mixed jury should remain both in the High Court and in the Sessions Court in all cases which are to be tried by jury under our proposals, subject, however, to certain provisions and safeguards, namely,—

Jury or assessors before High Court or Court of Session.

I. The same law as to the composition of the jury shall apply to Indians as to Europeans, that is to say he majority of the jury, if an Indian accused so desires, shall consist of persons who are not Europeans or Americans. This is already the law in Sessions Courts and section 275 should be so amended as to make it apply to the High Court also.

II. There shall be a right of appeal both on law and facts, both from conviction and acquittal, in the case of Europeans and Indians alike,

except where the jury are unanimous and the Judge agrees with the verdict of the jury. The further conditions of the appeal are described in paragraph 20 above. This proposal is recommended as an alteration of the general law of the land ; but in particular it is intended to form an integral part of our proposal to maintain the mixed jury.

III. The High Court Special Jury List should in our opinion be revised and it should no longer be limited to 200 Europeans and 200 non-Europeans. It should include all who are qualified, to whatever nationality they may belong. This revision will probably increase the proportion of non-Europeans in the list. This proposal involves the repeal of section 312 of the Code.

In the following respects the existing law should be maintained, namely, the number of the jury save with the two exceptions noted below will remain as at present ; the number required for a conviction or acquittal in the High Court and in the Sessions Court will continue unchanged ; and the right of reference in the Sessions Court under section 307 will also remain as it is ; this will be in addition to the right of appeal. As it is proposed to grant a right of appeal from the verdict of the jury and the judgment thereon both on points of law and of fact in certain cases tried in the exercise of its original criminal jurisdiction by a High Court, a certificate from the Advocate General, as laid down in the Letters Patent, will not be necessary in every case of appeal from a decision in the High Courts of Calcutta, Madras and Bombay. This proposal will involve the amendment of the provisions of the Letters Patent by the Indian Legislature.

The exceptions that we propose in regard to the number of the jury are :—

(*i*) in the Sessions Court the number should be any uneven number from five to nine which the local Government may select. Thus "five" should be substituted for "three" in section 274, as the minimum number of the jury in a Sessions Court ; and

(*ii*) in murder cases before the Sessions Court we are of opinion that the number of the jury should, if practicable, be nine.

26. Another difficulty arises from the fact that a European can claim a trial by jury in any case in a Court of Session, whereas a very large proportion of the cases in Courts of Session in which Indians are accused are tried with the aid of assessors. To meet this difficulty we consider it necessary to make special provision for cases in a Court of Session in which racial considerations between Europeans and Indians are involved ; and also to substitute for the trial of Europeans by jury, in certain cases in Courts of Session where racial considerations do not arise, trial with the aid of European assessors.

Our proposals are :—

(*i*) In any district in which for any class of offence Indians are normally triable in a Court of Session by jury the accused, whether Indian or European, shall be entitled to claim a mixed jury, that is to say, a jury consisting of not less than half of persons of his own nationality.

(*ii*) In any district in which for any class of offence Indians are normally triable in a Court of Session with the aid of assessors, but in which racial considerations between Europeans and Indians are involved, the accused, whether Indian or European, shall be entitled to claim a mixed jury, on the ground of the existence of such racial considerations. The Sessions Judge will decide the preliminary question whether in any particular case racial considerations are involved, and no appeal or revision shall lie against his decision on this preliminary point. He will have to decide who is the person really aggrieved. The exact wording of the provision will be a matter for the consideration of the draftsman, but where the accused and the complainant are of different nationalities, that is, where one is a European and one an Indian, racial considerations shall be deemed to arise.

(*iii*) In any district in which for any class of offence Indians are normally triable in a Court of Session with the aid of assessors and in which no racial considerations are involved, the accused, whether Indian or European, shall be tried with assessors, who, if the accused so claims, shall all be of the nationality of the accused. We add the further recommendation that in all cases triable with the aid of assessors there shall be, if possible, four, and in any case not less than three, assessors. The existing provision in Section 284 is that "two or more" assessors shall be chosen, as the Judge thinks fit.

It will be seen that so far as the European is concerned, his right of trial by jury will be taken away only in a limited number of cases in which no racial considerations are involved; and in such cases instead of being tried by a jury of five (the usual number in the Court of Session) of which he can claim that not less than three shall be Europeans, he will be tried probably with four and in any case with not less than three assessors, who will all, if he so claims, be Europeans. In the case of an Indian, he will be able to claim a mixed jury in any case where racial considerations are involved; and in any case triable with assessors, there will be not less than three Indian assessors.

27. In warrant cases outside the presidency towns, in which racial considerations between Europeans and Indians are involved, the accused and the complainant shall each have the right to apply to the trying Magistrate, on the ground of the existence of such racial considerations, for committal to the Sessions Court for trial by a jury of which not less than half shall be of the nationality of the accused. If the Magistrate decides in favour of the applicant, that is to say, if he finds that racial considerations are involved, he shall proceed to make a preliminary enquiry as in cases triable by the Sessions Court. If the Magistrate finds that no racial considerations are involved, the applicant shall have the right to appeal to the Sessions Court against the decision of the Magistrate on this preliminary point. We would give no right of appeal or revision from the decision of the Sessions Court on the preliminary point as to whether in any particular case racial considerations are involved or not. We have already in paragraph 26 indicated what we mean by racial considerations and when they shall be deemed to exist.

The Hon'ble Sir William Vincent would prefer to give the right mentioned in this paragraph to the accused only and not to the complainant also.

28. Similarly in summons cases outside the presidency towns, we are of opinion that where —

(*i*) racial considerations, as already defined, between Europeans and Indians are involved, and also

(*ii*) the offence is punishable with imprisonment, the accused and the complainant shall each have the right to apply to the trying Magistrate that the case be sent to a Bench of two Magistrates of the 1st class, one Indian and one European, for trial, on the ground of the existence of such considerations. If the trying Magistrate decides against the applicant on this preliminary point, the applicant shall have the right to appeal to the Sessions Court against the decision of the Magistrate on the point.

When the case is tried by the above mentioned Bench, in the event of a difference of opinion between the Magistrates the case, with the opinions of the Magistrates, will be laid before the Sessions Judge, who, after taking such further evidence, if any, as he may think fit, shall pass such judgment, sentence or order in the case as he thinks fit and is according to law. From the decision of such a Bench there shall be an appeal in accordance with the ordinary law. An appeal against the decision of the Sessions Judge will lie to the High Court, if an appealable sentence is passed by him.

Jury before District Magistrate.

29. *Section 451.*—We are of opinion that trial by jury before Magistrates should be abolished.

Details of procedure in cases in which European British subjects are concerned.

Sections 452 to 455 inclusive.—Consequential amendments only.

Sections 456 to 458 to be read with Section 491.—We are of opinion that the rights which Europeans enjoy of the nature of *habeas corpus* should be extended to Indians throughout British India. In this and other matters we would not interfere with the existing procedure in respect of Indian States.

Provisions corresponding to *habeas corpus.*

Section 459.—Consequential amendments only.

Application of Acts conferring jurisdiction.

30. *Sections 460 and 461.*—These sections deal with Europeans (not being European British subjects) and Americans. We are of opinion that, unless any of the privileges in regard to any such persons are found to be based on treaty, they should be abolished.

Trials of Europeans or Americans.

Sections 462, 463 and 534.—Consequential amendments only.

Procedure in trials of European British subjects, Europeans or Americans.

31. *The Penal Servitude Act, XXIV of 1855 and Section 56 of the Indian Penal Code.*—We are of opinion that Section 56 of the Indian Penal Code and Act XXIV of 1855 should be repealed. The commutation of a sentence of transportation can be effected under Sections 401 and 402 of the Criminal Procedure Code and the ordinary Prison Rules, which apply to Indians and Europeans alike. We do not take objection to the commutation of sentences of transportation in the case of Europeans, but we are of opinion that statutory distinctions in this respect are not necessary. We are informed that the question of abolishing sentences of transportation as a form of punishment is under consideration.

32. *European Vagrancy Act, IX of 1874.*—It will be for the draftsman to consider whether any change is necessary in the European Vagrancy Act, having regard to the proposed repeal of Section 111 of the Criminal Procedure Code.

33. No change is necessary in the provisions relating to Presidency Magistrates.

34. To put our main proposals, in respect of the modifications of the Criminal Procedure Code, into tabular form, their effect will be :—

For European British subjects.	*For Indians.*
I. An appeal will lie against any sentence of imprisonment passed by a Magistrate. There will also be a right of appeal against any sentence of fine exceeding Rs. 50.	The same.
II. In every case before the High Court and Sessions Court, in which he is tried by a jury, the accused will be entitled to claim a mixed jury, that is a jury consisting of not less than half of the nationality of the accused, subject to—	
(*a*) An appeal on facts as well on law in the case both of conviction and acquittal, when the jury are not unanimous, or when the jury are unanimous but the Judge does not agree with them.	
(*b*) A probable increase in the number of Indians in the Special Jury List.	
(*c*) A provision that the jury shall be not less than five and in all murder cases, if practicable, nine.	The same.
III. The accused in the Sessions Court will be entitled to claim to be tried by jury in any class of case which is normally triable with assessors if racial considerations are involved.	The same.
This provision is in addition to the right of trial by jury in all cases in the High Court and also in Sessions Courts where such a method of trial is prescribed under Section 269 of the Criminal Procedure Code.	

For European British subjects.	*For Indians.*
IV. In any class of case in the Sessions Court which is normally triable with assessors and where no racial considerations are involved, he will be tried with assessors, who will not be less than three in number, and who, if the accused so claims, will all be of his own nationality.	The same.
V. In a warrant case in which racial considerations are involved, the accused and the complainant will each be entitled to claim the committal of the case to the Sessions Court for trial by a jury.	The same.
VI. In a summons case where racial considerations are involved and where a sentence of imprisonment can be passed, the accused and the complainant will each be entitled to claim that the case shall be tried by a Bench of two first class Magistrates, one Indian and one European, reference in case of disagreement being to the Sessions Judge.	The same.
VII. In any other case triable by a Magistrate, if the accused so desires, the trial will be by a first class Magistrate, except in cases punishable with fine of not more than Rs. 50 only.	It is not practicable to extend this to Indians.
VIII. Judges and Magistrates, outside presidency-towns, will have power to pass all sentences which they are authorised by law to pass, except whipping and sentences under Section 34 of the Criminal Procedure Code on which subjects inquiry is proposed.	The existing arrangements continue pending the result of the proposed inquiry.

Note.—Clauses I, IV, V, VI, VII and VIII apply only outside presidency-towns.

We also propose the repeal of Section 460 which provides for a special procedure in the case of Europeans (not being British subjects) and Americans.

35. We regret that one member of the Committee, Mr. Stuart Roffey, a representative of the non-official Europeans of Assam, owing to private and personal reasons, was unable to attend the meetings of the Committee and had to resign his seat thereon.

Some members of the Committee were unable to attend our final meetings.

36. In conclusion, we desire to place on record our deep sense of obligation to our colleague, Mr. Percival, I.C.S., M.L.A., who has, throughout the proceedings of this Committee, acted as Secretary and brought to bear upon the work infinite patience and great industry which has been of great assistance to us in the preparation of this report. We also desire to express our acknowledgments to Mr. Tonkinson, Joint Secretary in the Home Department, for the assistance he has given us generally.

TEJ BAHADUR SAPRU, *Chairman.*
W. H. VINCENT.
ABDUL KASIM.
L. M. BANERJI.
N. M. SAMARTH.
*T. RANGACHARIAR.
S. R. DAS.
*H. GIDNEY.
*W. L. CAREY.
P. E. PERCIVAL.
*THOMAS C. P. GIBBONS.
S. SULTAN AHMAD.
*L. A. SHAH.
*H. S. GOUR.

SIMLA ;
The 14th June 1922.
CALCUTTA ;
The 24th June 1922.
PATNA ;
The 10th July 1922.
BOMBAY ;
The 25th July 1922.
NAGPUR ;
The 29th July 1922.

* Subject to a separate minute.

Note.—Mr. F. McCarthy, M.L.A., who was unable to attend the final meetings of the Committee, has intimated that if he had done so he would have signed the Report.

MINUTE BY MR. T. RANGACHARIAR.

INTRODUCTORY REMARKS.

Scope of Enquiry.

In pursuance of a resolution of the Legislative Assembly passed on the 15th September, 1921, recommending *the removal of all racial distinctions between* Indians and Europeans in the matter of their trial and punishment for offences, the Government of India in their Resolution No. F.-105 Home (Judicial), dated the 27th of December, 1921, appointed this committee declaring *that they have already accepted the principle that there should be equality of status for all people* in this country in the matter of criminal trials and proceedings. By that order the Government have asked this committee to consider the existing racial distinctions in the criminal procedure applicable to Indians and non-Indians, and to report such modifications of the law as should be adopted to carry out the principle so accepted.

It is necessary to emphasize this aspect of the resolution at the outset. Some of the witnesses who appeared before the committee sought to raise the question as to whether the principle should be accepted at all. Whether or not, the Government have accepted in full the recommendation of the Assembly to remove all racial distinctions; they have clearly adopted the principle that there should be equality of status for all subjects.

The Existing Racial Distinctions in Criminal Procedure.

There are five classes of Criminal, Courts under the Code, to administer Criminal Justice—

(1) Courts of Session including the High Court;
(2) Courts of Presidency Magistrates;
(3) Court of a Magistrate of the first class;
(4) That of a Magistrate of the 2nd class, and
(5) That of a Magistrate of the third class. (*Vide* Sec. 6.)

These Courts have power to try offences both under the Penal Code and under any other law subject to the limitations laid down in sections 28 and 29, etc. In respect of the passing of sentence also, their ordinary powers are defined in sections 31 and 32, etc.

All Indians, and for the matter of that, all Asiatics, as well as all Europeans and Americans, not being British subjects, are amenable to the ordinary jurisdiction of these Courts and sentence according to law can be imposed upon these people, within the limits defined for each class of Courts, irrespective of the position, language or country, tribe or religion to which the accused may belong.

The main distinctions which exist in the case of European British subjects accused of an offence in the matter of their trial, commitment, sentence and appeal are exhibited in the subjoined table.

INDIANS.	EUROPEAN BRITISH SUBJECTS.
(Including Europeans and Americans.)	
I. Trials.	*I. Trials.*
Offences under the Indian Penal Code are triable—	A chartered High Court, and the Chief Court, Lower Burma, may try any offence and pass any sentence authorized by law.
(*a*) by the High Court, or	
(*b*) by the Court of Session, or	
(*c*) by any other Court by which such offence is shown in the eighth column of the second schedule to be triable (Sec. 28).	
Offences under other laws—	
1. *By Court of Session.*—If punishable with death, transportation or imprisonment for seven years or upwards.	No Judge presiding in a Court of Session, except the Sessions Judge, shall exercise jurisdiction over a European British subject, unless he himself is a European British subject, and if he is an Assistant Sessions Judge unless he has exercised the office of Assistant Sessions Judge for at least three years, and has been specially empowered in this behalf by the local Government (Sec. 444).
2. *By Court of Session, Presidency Magistrate or Magistrate of the first class.*— If punishable with imprisonment for 3 years and upwards but less than 7.	
3. *By Court of Session, Presidency Magistrate or Magistrate of the first class or Magistrate of the second class.*- If punishable with imprisonment for 1 year and upwards but less than 3 years.	In trials of European British subjects before a High Court or Court of Session, if, before the first juror is called and accepted, or the first assessor is appointed, as the case may be, any such subject requires to be tried by a mixed jury, the trial shall be by a jury of which not less than half the number shall be Europeans or Americans or both Europeans and Americans [Cl. (1), Sec. 450].
4. *Any Magistrate.*—If punishable with imprisonment for less than one year or with fine only (Sch. II).	

II. Commitment.

An Indian is ordinarily committed to the Court of Session (Sec. 206) and if in a Presidency-town, to the High Court.

When an Indian is jointly charged with an European British subject, who is about to be committed for trial before the High Court, the Indian also must be committed to the High Court (Sec. 214).

III. Sentence.

The *High Court* may pass any sentence authorized by law. A Sessions Judge or an Additional Sessions Judge may pass any sentence authorized by law, but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court (Sec. 31).

An *Assistant Sessions Judge* may pass any sentence, except a sentence of death or transportation for a term exceeding seven years, or imprisonment for a term exceeding seven years (Sec. 31).

Presidency Magistrate or Magistrate of the first class may pass any sentence of imprisonment for a term not exceeding two years, including such term of solitary confinement as is authorized by law.

Fine not exceeding Rs. 1,000; whipping (Sec. 32).

Magistrate of the second class may pass any sentence of imprisonment for a term not exceeding six months, including such solitary confinement as is authorized by law. Fine not exceeding Rs. 200.

It is not illegal to impose solitary confinement as a part of the sentence in a case tried summarily. 6-A-83.

Magistrate of the third class may pass any sentence of imprisonment for a term not exceeding one month. Fine not exceeding Rs. 50.

IV. Appeal.

Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which a Court of Session or the District Magistrate or other Magistrate of the first class passes a sentence of imprisonment not exceeding one month only or of fine not exceeding Rs. 50 only or whipping only (Sec. 413).

There shall be no appeal by a convicted person in cases tried summarily in which a Magistrate, empowered to act under Section 260, passes a sentence of imprisonment not exceeding three months only, or of fine not exceeding Rs. 200 only, or of whipping only (Sec. 414).

II. Commitment.

When the offence cannot be adequately punished by the Magistrate, the commitment for trial must be ordinarily made to the Court of Sessions [Sec. 447 (3)].

When the offence which appears to have been committed is punishable with death or transportation for life, the commitment is *direct* to the High Court [Sec. 447 (2)], as also when the commitment is by a Presidency Magistrate.

III. Sentence.

The *High Court* may pass any sentence authorized by law (Sec. 31). No *Court of Session* shall pass on any European British subject any sentence other than a sentence of imprisonment for a term which may extend to one year or fine or both (Sec. 449). No limit to fine. If before signing judgment the Judge thinks that the offence which appears to be proved, cannot be adequately punished by him, he should transfer the case to the High Court [Sec. 449 (2)].

A *District Magistrate* shall not pass any such sentence other than imprisonment for a term which may extend to six months or fine which may extend to Rs. 2,000 or both (Sec. 446).

The ordinary powers of a *Presidency Magistrate* are in no way curtailed in the case of European British subjects.

No *Magistrate*, unless he is a Magistrate of the first class, a European British subject and a Justice of the Peace, shall inquire into or try any charge against a European British subject (Sec. 443).

No *Magistrate*, other than a District Magistrate or Presidency Magistrate, shall pass any sentence on a European British subject other than imprisonment for a term which may extend to three months or fine which may extend to Rs. 1,000 or both (Sec. 446).

It is doubtful if the provisions of Chapter XXII (Summary Trials) can suitably be applied to European British subjects. Second and third class Magistrates cannot punish European British subjects, though they can take cognizance (Sec. 445).

A sentence of whipping cannot be passed at all on a European British subject by any mofussil Magistrate or even by the Sessions Court.

IV. Appeal.

Nothing in Sections 413 or 414 applies to appeals from sentences passed under Chapter XXXIII on European British subjects: in other words, *if a European British subject is imprisoned for a single hour or fined a pie*, he has a right of appeal (Sec. 416).

Such appeal may be made either to the High Court or Court of Session at the option of the European British subject who is convicted (Sec. 408).

There shall be no appeal in cases tried by a Presidency Magistrate or Magistrate of the first class when the accused pleads guilty, except as to the extent or legality of the sentence (Sec. 412).

If a person not being a European British subject is jointly tried with a European British subject before a District Magistrate, he cannot claim the right of appeal to the High Court, reserved to European British subjects. 14 B. 160.

MAIN FEATURES OF EXISTING SYSTEM.

Aliens, whether Japanese or Afghans, are treated alike. Indians, whether titled Rajas, Maharajas or nobles or humble peasants, whatever their language—and there are a number of languages in the country—are all equally amenable to the jurisdiction and powers of all the Criminal Courts.

No Indian can claim trial by a jury before a Magistrate. No Asiatic alien can claim a trial by a jury of his own compatriots, whereas a European or American, though an alien, can claim to be tried by a mixed jury in a jury case before the Sessions Court with a majority of his own countrymen—European or American. So also with reference to the panel of Assessors.

An European British subject is not amenable to the jurisdiction of any Indian Magistrate unless he is a District Magistrate or a Presidency Magistrate. An European British subject can claim to be tried by a jury even before a District Magistrate with an European or American majority in it. Indeed no Assistant Sessions Judge, nor even an Additional Sessions Judge presiding over a Court of Session can, unless he himself is an European British subject, try an European British subject—and in all trials before a Court of Session, whatever the nature of the offence charged, an European British subject can claim a mixed jury with a majority—European or American.

The provisions in the Code regarding European British subjects, the mode of their trial and the punishment to be inflicted on them—these provisions in the code are essentially based upon racial distinctions—some of the provisions therein are paradoxical even: whereas an European British subject cannot claim to be tried by a jury, whether mixed or not, before an European first class Magistrate, he can claim so to be tried before a District Magistrate. This is apparently because an Indian may happen to be a District Magistrate. Similarly also before a Sessions Judge. The system thus effectively secures what it aims at—an European Magistrate, Judge or jury for trying European British subjects for any offence,—except in the three Presidency-towns—and even in these three Presidency-towns in a trial before the High Court, an European accused can claim a mixed jury with a majority, European or American.

Results.

The result is :—

(1) the creation of a sense of racial superiority, if not arrogance, in one class of His Majesty's subjects and the placing of a stamp of inferiority on another class and in their own country of the subjects of His Majesty;

(2) the Legislature of the country openly denouncing the natives of the soil as a class incompetent and unfit to try offenders belonging to a particular section;

(3) a tendency to create a sense of security or practical immunity from punishment in the minds of European British subjects.

(4) the corresponding feeling of helplessness in the minds of the larger section of the population against offenders of a particular class.

(5) to crown all, the resulting indifference among European British subjects to Legislation on Crimes and Criminal Procedure by reason of the existence of these particular provisions for them;

(6) also failure of justice.

That this system has also resulted in several cases in gross miscarriage and travesty of justice cannot but be admitted. That there is such a belief among the Indians is notorious. Some attempt was made by some members of the Committee to cross-examine the witnesses who spoke as to this belief with a view to elicit particular instances of miscarriage of justice. That line of cross-examination is hardly of any use when the question is one of general impression. That this belief among the Indians is largely shared by responsible Europeans and local authorities in the country is amply borne out by the papers placed before this Committee.

Justice and Equality.

The objection rests therefore not merely on sentiment but on the two watchwords which guide the present Government, *viz.*, justice and equality and to such a *Government* already convinced that there should be equality of status for all people in this country in the matter of criminal trials and procedure, it is unnecessary to pursue the matter further.

Some General Objections Considered.

It is stated that the time for considering this question is inopportune. It is true that racial feeling has been roused to a high pitch by the recent political activities of the non-co-operators. But it is also true that one of the great weapons in the hands of the non-co-operator, which is also a just weapon, is the maintenance of these distinctions.

Problem stated, and its origin.

In that view the graceful concession of untenable points will be an act of true and great statesmanship. That the existing position is untenable will appear from a closer examination of the question. I pursue the matter further to make the thinking section among our European fellow-subjects pause and consider the question on its merits and I am indebted to the Madras Law Journal for the lucid exposition which I extract below :—

" Europeans and Americans who are not British subjects have hardly any special rights, the only thing allowed to them being the right to claim that ' in every case triable by a jury or with the aid of

assessors, not less than half the number of jurors or assessors shall, if practicable and if such European or American so claims, be Europeans or Americans.' In the Code of 1872 a European or American not being a British subject had an absolute right to be tried by jury. This provision was omitted in the Code of 1882 and he has no longer such right. No complaint has ever been made by foreign nationals that they have not been properly and efficiently tried by the ordinary Courts in India. Nor will the justice of such a complaint if made be admitted for a moment by the British people whose very boast is one of impartial and efficient administration of justice in this country. It will thus be seen that the special clauses relating to European British subjects can have no international analogy to appeal to and are frankly mere privileges. They are recognized as such even by the legislature and it is provided that those privileges are forfeited when a European British subject is declared a vagrant. The Indians have always regarded them as invidious distinctions based on racial considerations. As a matter of fact, they are survivals of a by-gone age and having regard to the changed conditions, are mischievous anachronisms keeping alive a sense of racial humiliation for Indians in their own country. The humiliation is felt the more keenly when the definition of that term is scrutinized. A European British subject is defined as —

(1) Any subject of Her Majesty born, naturalized or domiciled in the United Kingdom of Great Britain and Ireland or in any of the European, American, Australian Colonies or possessions of Her Majesty or in the Colony of New Zealand or in the Colony of Cape of Good Hope or Natal; (2) any child or grand-child of any such person by legitimate descent".

It is not merely the Englishman, Irishman or Scotchman born in the British Isles but also every specified Colonial whether he is a European, a Negro, a Maori, or one of any other of the numerous native races. An Indian woman perchance goes to England or to Natal and is delivered of a child there. The child will have all the privileges of a European British subject. The same would apply to naturalized foreigners; though as foreigners they had not these privileges, as soon as they are naturalized, they come to possess them. Other Colonials not being of British extraction within the limits prescribed have only to emigrate to Australia or to New Zealand or the Colony of Cape of Good Hope or Natal and they acquire the right to these privileges. The Indian who disowns his country and becomes a Colonial becomes entitled to these privileges. Other Colonials though of British or European extraction do not possess these privileges. The most galling and even humiliating portion of the whole thing is that Colonials that do not admit Indians into their country and make the most invidious distinctions against them, should have those privileges in their own land.

"These distinctions have their origin in the historical accidents of the beginnings of British occupation in this country. At the commencement they had no racial hue about them and at one stage were even retained with a view to protect the native inhabitants of this country. The distinction was then between those that were *British subjects* and those that were not. It was the assertion of the right of European nationals to try their own offenders and settle their own disputes (whatever short shrift such a claim might have had with a Mughal Emperor like Aurangzeb). The continued recognition in theory of the Sovereignty of the Mughal served to perpetuate the distinction. So far as British territory strictly so called was concerned, there was no distinction between the Indian subject and the European subject. It must be noted that till 1833, the European, the predecessor of the non-official European British subject of to-day, was in India only by sufferance. He was regarded as an interloper and was not allowed to reside except under a special licence. Lord William Bentinck's policy was to alter this state of things. He was anxious to facilitate the admission of settlers into the interior and give them the right to settle there but to couple with that right as a necessary and indispensable condition the liability to be governed by the same laws and to be under the jurisdiction under the same Courts as the natives of the country. It was in accordance with and in furtherance of this policy that Charter Act of 1833 was passed. It considerably enlarged the powers of the Indian Government to make laws, the only restraint being that they should not empower Courts other than those chartered by the Crown to sentence British subjects to death, a trace of which is to be found in the Government of India Act of 1915, Section 65, which provides that the Governor General in Council has no power without the previous approval of the Secretary of State in Council to make any law empowering any Court other than the High Court to sentence to the punishment of death any of His Majesty's subjects born in Europe or the children of such subjects (not all European British subjects). Till the Europeans came to be admitted freely into India, the special treatment in respect of Courts accorded to British subjects who were public servants was in effect a sort of *Droit administratif* which, having regard to the peculiar conditions, was more a protection for, than a racial discrimination against, the Indian. The state of things was altered when the Europeans came to be freely admitted. As a condition of their admission, responsible statesmen in England conceived that they should be subject to the same laws and be tried by the same Courts as the Indians. The racial aspect became pronounced when by the direct assumption of the Government of India by the Crown the Indian became, equally with the European, a British subject. The following extract from the despatch from the Court of Directors to the Governor General, dated the 10th December 1834, will bear out what we said above as to the conditions of the free admission, clause 59. 'First we are decidedly of opinion that all British-born subjects throughout India should be forthwith subjected to the same tribunals with Natives. It is of course implied in this proposition that in the interior they shall be subjected to the mofussil Courts. So long as Europeans penetrating into the interior held their places purely by the

tenure of sufferance and bore in some sense the character of delegates from a foreign power, there might be some reason for exempting them from the authority of the judicature to which the great body of the inhabitants were subservient. But now that they are become inhabitants of India, they must share in the judicial habitudes as well as in the civil rights pertaining to that capacity and we conceive that their participation in both should commence at the same moment. It is not merely on principle that we arrive at this conclusion. The 85th clause of the Act, after reciting that the removal of the restrictions on the intercourse of Europeans with the country will render it necessary to provide against any mischiefs or dangers that may hence arise, proceeds to direct that you shall make laws for the protection of the natives from insult and outrage, an obligation which in our view you cannot possibly fulfil unless you render both natives and Europeans responsible to the same judicial control. There can be no equality of protection where justice is not equally and on equal terms accessible to all.'

"The first of the steps taken to give effect to the policy was the passing of Lord Macaulay's Act of 1836, which subjected the European to the same Civil Courts as the natives of India. Though predictions were confidently made at the time by opponents of the measure that if it became law, India would be deserted by British capital, it need not be stated that the threatened eventuality has not yet come to pass. Lord Macaulay's Act applied only to Civil Courts but he left on record his opinion that similar legislation ought to be applied to Criminal Courts. Proposals for the purpose were submitted by the Indian Law Commissioners. Effect was sought to be given to them in 1849 in a Bill which proposed to make all persons subject to the Company Magistrates and Courts outside the Presidency-towns, the only reservation being that no such Magistrates or Courts should have power to pass a sentence of death on any of Her Majesty's subjects born in England or on the children of such subjects. Lord Dalhousie in withdrawing the Bill said 'I am most clearly of opinion that the time has come when the exemption in question ought to be abolished and that the British subjects should be brought within the jurisdiction of Criminal Courts in the mofussil as they have long since been brought under the jurisdiction of the Civil Courts. But, after an anxious consideration of the subject, I must declare that I am not prepared to place the British subject under the Criminal law which is now administered in those Courts or to deprive him of his privilege of being judged by English law until we can place him under Criminal law equally good or at all events as good as the circumstances of India will admit of. This is far from being the case at present. The Criminal law administered in the mofussil is, in substance, the Mahomedan law modified from time to time by the Regulation and expounded by the decisions of the Sudder Court.' But by the passing of the Penal Code in 1860 and the Criminal Procedure Code of 1861 the one objection to which Lord Dalhousie attached weight was removed. But in the meanwhile the Mutiny had intervened and men's minds were clouded by passion. Nevertheless the controversy up to 1872 was not whether a European British subject should be triable by a Judge of particular race but whether he should be triable by a particular class of Courts. The Criminal Procedure Code of 1872 it was that really introduced race distinction. Inside the Presidency-towns, Magistrates and Judges have never been subject to any disqualification or disability and Indians have always been eligible to be appointed and have been freely appointed as Justices of the Peace with jurisdiction over European British subjects and the same state of affairs continues even after the Criminal Procedure Codes, the European British subjects being liable to be punished to the same extent as Indians by the Presidency Magistrates although they are recruited from the same class of officers as the mofussil Indian Magistrates."

Language and Habits.

Any attempt to justify the continuance of this racial privilege on the ground of a want of his knowledge of the language of the accused person or his habits, and his motives, on the part of the Judge and the jury, will not stand a close examination. If such knowledge is essential, one or two jurymen with such knowledge will be enough. Then why insist on a majority? Habit and motives rarely affect the question of guilt and innocence. If it is a valid objection, then even so, it applies to all alike and we must recruit such Magistrates and Judges only as have knowledge of all languages and acquaintance with people of all races and castes. Language of the witnesses is more important than that of the accused. This theory of qualification by knowledge of language in this sense was abandoned in England in the case of the trial of aliens as long ago as 1875.

Safeguards Necessary.

The circumstances of a small community living in an alien society liable at all times to racial prejudice entitle it to such measure of protection, as it is necessary to secure for it, not privilege, but justice. More cannot reasonably be claimed. We have now to see as to what measures could be adopted so as to remove the racial distinctions, while at the same time safeguarding the principle stated just above.

The general accepted rule in all civilized communities is thus stated by Baron Pollock in *Regina* v. *Gauz* (at 9 Q. B. p. 100): "Whatever rights civil or otherwise a man may have which may be affected by his domicile, it is, and must be, perfectly clear, by the Law of all Nations, that each person, who is within the jurisdiction of the particular country in which he commits the crime, is subject to that jurisdiction; otherwise the criminal law would not be administered according to any civilized method."

It may be permissible to point out, however unpleasant the task may be, that it is necessary, and absolutely necessary, to face the question—

and in so facing the question half-measures will be absolutely useless, if not seriously mischievious.

The experience of the patched up compromise of 1883-84 must serve as a beaconlight in dealing with this question and Monsieur Joseph Chailley's comments on that compromise in section 8 of chapter V of his book on "Administrative Problems of British India" may be perused with advantage.

Fear of agitation.

True, one or two of the Bengal European witnesses have spoken to the determination of the Europeans of that province to carry on an intensive agitation in case the essential privileges hitherto enjoyed by the European should be withdrawn. But a *strong* Government, and I I emphasize the word 'strong' for the Government of India are advised by those very Europeans to be strong in dealing with Indian agitation, would not, I am sure, be deterred from doing what it considers to be its duty—to secure justice and equality to all alike. It is stated that the agitation will be constitutional and it may be expected that the agitation, if any, will not take the form it did in 1883; for the non-co-operator, as prophesied by the *Punch* of those days, has copied the very methods adopted by them; boycott of social functions, open disrespect for high placed personages, tampering with volunteers and low whispers at canteens. It is agreed on all hands that it is desirable that these distinctions should be removed. Even those who advocate the retention of these privileges of Europeans admit that these distinctions should one day disappear, but their position is 'Not yet.' I do not think the time will ever come, at any rate not in the near future, when the European will willingly give up these privileges. It is not, and has never been, human nature to do so. So long as no injustice is done to him, the fear of any agitation on his part should not deter the Government doing its duty. On the other hand, if the situation is not radically changed, equally strong if not stronger protest would be evoked in the Indian community, and it has also to be remembered that the privileges now enjoyed are the creature of a Legislation at a time when there were no popular representatives in the Legislative Councils; whereas, now, the Government have to put the measure through a Legislative Assembly which contains a large preponderance of popular representatives. Hence it is that even the European and Anglo-Indian Association of South India admit "that in view of the present political situation in India the Association recognize the change is inevitable and therefore propose to offer no opposition."

Recommendations.

Trials before Magistrates:—

It has been brought out in evidence that the conditions vary in each province in respect of the qualifications of the magistracy generally and in particular of magistracy of the 2nd or the 3rd class. In Madras, almost all the Magistrates are fairly acquainted with the English language and render their judgments in English—most of them being University graduates.

Second and Third Class Magistrates.

I recognize second and third class Magistrates are given immense powers under the Code in dealing with the liberty of the person of His Majesty's subjects. I am confident that that would not have been the case if these Magistrates had also jurisdiction over European British subjects—regard being had to the present conditions of recruitment to these Magistracies and to the combination of executive and judicial functions in the District authorities. I quite recognize it will not be safe, from more points of view than one, to entrust the trial of European British subjects for serious offences in their hands. I would empower all Magistrates to try European British subjects as well, in the case of all offences which are of a non-criminal character—that is to say, such as though technically criminal cannot be regarded as *crimes* in the more serious sense of the term—as for instance contravention of Municipal Regulations or Railway Traffic Regulations or other contraventions *ejusdem generis* and not involving violence, cruelty or gross dishonesty. Thus we recommend that all summons cases—where the offence is punishable with fine only not exceeding fifty rupees—shall be triable by any Magistrate even in the case of European British subjects.

First Class Magistrates.

I would make all persons amenable to the jurisdiction of the first-class Magistrate irrespective entirely of his nationality. The maintenance of the distinction between European first class Magistrates and other first class Magistrates is an anomaly that should be done away with at once. The same man while as a Deputy Magistrate on the outskirts of a Presidency-town as in Saidapet cannot try an European British subject, but can when he is posted as a Presidency Magistrate in Madras, try and convict European British subjects and sentence them to two years' rigorous imprisonment. The persons who are recruited to be Presidency Magistrates are mostly drawn from this class of persons who are appointed first class Magistrates. The testimony is uniform as to the fairness of the average Indian first class Magistrates of to-day. A safeguard against possible miscarriages of justice has been added in warrant cases in which racial considerations arise by enabling complainant and accused to have the trial removed to the Sessions Court to be tried by a mixed jury. The result is that all serious cases triable by Magistrates shall in the case of European British subjects at the option of the accused be tried by first class Magistrates or the Sessions Court.

Jury before Magistrates.

I would not retain the right of an European British subject to claim a jury before a District Magistrate. The European British subject has no right to claim a jury before an ordinary first class Magistrate. He has not the right to claim a jury before a Presidency Magistrate who can give two years' imprisonment and who can be of any nationality. His right to claim a jury before a District Magistrate was only recently granted in 1884 by way of compensatory advantage to the possibility of an Indian District Magistrate trying him. In

practice it was seldom claimed. To maintain it and yet give equality of status to an Indian would mean an extension of the jury system to the Indian too, before a Magistrate, and would lead to complications. There is no justification for maintaining it and, indeed, even in England, there is no right to trial by jury in a summary case before a Justice of the Peace who can inflict six months' imprisonment (without a jury).

The power to inflict sentences in the case of Magistrates should be uniform in all cases within the jurisdiction and should not depend on the nationality of the accused before them. This footing of equality between an European British subject and an Indian subject before a Magistrate would have also the effect of enabling the present machinery for the administration of criminal justice being made good enough to be trusted with the lives and liberties of all subjects of His Majesty and every one would join in bringing it up to the proper level in the interests of all. This applies to the sentence of whipping also in case it is retained.

Trials before Sessions Court.

As regards trials before Sessions Courts while I am averse to extend the system of trial by jury, I am also conscious of the fact that the Europeans attach a great deal of importance to trial by jury. But we should also note that the trial by jury to which the English citizen is accustomed at home, is a trial by twelve jurymen and for the verdict of the jury to be operative it should be unanimous. We, here, have got neither that safety in numbers, nor that requisite of unanimity for verdict in the jury system obtaining in this country. If it is that right which the Britisher enjoys in England, *viz.*, a panel of twelve jurymen, an unanimous verdict and the chance of the ballot, of course with the right of challenge, which is claimed, no reasonable objection can be made to such a claim. Here in India, the jury may be any number from 3 to 9, and a bare majority in the Sessions Court and a majority of 6 to 9 in the High Court is enough to operate as a verdict, only, in the latter case, the Judge has to agree. In the Sessions Court, a majority of 2 to 1 ; or 3 to 2 ; or 4 to 3 is enough, and, unless the Judge so strongly disagrees that in the interests of justice he is to make a reference to the High Court, he is bound to accept its verdict. So the insistence of the Britisher on having a trial by such a jury coupled with the right to have not less than one-half of the number to be of his own race cannot be justified on reasonable grounds. While conceding the right to a trial by jury to all alike and without extending the system of trial—the Committee have been able to arrive at a satisfactory solution.

Mixed Jury.

I will now take up the vexed question of the right to claim a mixed jury in any case. The system of mixed jury suffers from certain obvious defects. It is perpetuating the racial distinction whether it be for the Indian or for the European. The juryman would go into the box as if he was representing a particular community. The chances of securing even limited justice will be greatly diminished. The chance of the ballot is one thing ; the choice of compatriot jurymen is another. If this is conceded, there is no reason why a claim to have the same religion or men speaking the same language or men of the same caste, if not of the same sub-caste should not be justly and consistently recognized, or to have an Irishman for an Irishman or Welsh for a Welsh. Any European or American is good enough in the jury-box but not an Indian.

The claim is made for a mixed jury particularly in cases where racial animosity is excited and on the ground that then the mixed jury becomes not a privilege but a necessity. The European Association of Calcutta in their memorandum at page 3 suggest that the right to have a mixed jury may be extended to all in such cases—Indians and Europeans alike. One would have thought that in such cases in order to secure justice, no jury would be considered safe—as there will be bias always either for or against the accused. In such cases, exceptional as they are bound to be, the better remedy is not to give a mixed jury with a majority of men belonging to the race of the accused but to provide a special tribunal of two or three gentlemen of experience. While ordinarily, therefore, a right to claim a trial by jury may be granted, a right to claim a mixed jury need not be granted and liberty must be reserved to the trial Judge in a Sessions case to certify that in particular cases, on account of prevailing faction or prejudice, he is satisfied that trial by jury would be inappropriate and unsatisfactory and to ask the High Court to constitute a special tribunal to try such cases.

I doubt if it will afford any satisfaction to responsible public opinion in the country if the privilege of a mixed jury were to be acceded to Indians charged with crime ; for it is difficult to conceive how failure of justice in the case of European accused would be compensated for by any enactment which is not calculated to advance further the ends of justice but might possibly lead to miscarriages of it in the case of Indian accused persons also. The Indians do not want equality in injustice and any attempt at or compromise of that sort is likely to undermine all respect for the administration of criminal justice and for criminal courts in this country. If responsible European opinion does not desire that European offenders should escape punishment any more than the Indian would wish innocent Europeans to be convicted, any proposal short of the abandonment of a claim of a mixed jury with the element of racial majority in it is likely to be received with the gravest suspicion by the Indian public.

I have tried my best to follow the advice given by the European Association to bring up the Indian to the level of the European in the matter of the administration of criminal justice whenever that can be done without detriment to principle or to justice. But where this levelling up process is likely to lead to the enlargement of the field for injustice or to increase the chances of it, as in the case of giving a mixed jury with a majority of jurymen of the race of the accused, the suggestion is not easy of acceptance. A further suggestion has been made to minimize the evils resultant on having a mixed jury with a racial majority, that

the jury should be composed of not more than a bare majority of men of the same race as the accused and the rest should be of a different race. While it may be possible to work this out in Presidency towns it will not be practicable to do so in the mofussil stations, as in the case of an Indian accused the Court will be driven to find three out of seven or four out of nine non-Indians to serve on the jury. This system is open to the objection of keeping always in view in the minds of the jurymen that he is there because he belongs to the same nationality as the accused or because he belongs to a different nationality. While I do not desire to minimize the present situation and the risk of unjust conditions the remedy does not lie in accepting any such compromise of a bare majority and no more.

In political cases and cases involving racial issues, the safer course is to allow the trial judge a discretion to ask for a special tribunal either of his own motion or on application by the prosecution or the defence.

It must be remembered the existing privileges were conferred at a time when popular will did not and could not assert itself in the Legislative Assemblies, and therefore such legislative precedent, sanction or dispensation cannot be the foundation of their continuance hereafter.

But it has been brought home to me during the discussions in the Committee that the European has been accustomed for a long series of years to regard trial by a mixed jury in this country as his prescriptive right. A complete reversal of that system is bound to produce an alarm in the minds of Europeans and may lead to an agitation of an undesirable character here and more so in England where it is easy to exaggerate.

Most of the privileges hitherto enjoyed by the European British subject and the consequent disabilities attaching to the Indians are to disappear on the rest of the recommendations now being made by this Committee, and it is understood that the European community are prepared to accept those changes.

If the chances of miscarriage of justice are reduced, and the same procedure is made applicable to all subjects of His Majesty, the objections to the existing system will be minimized, though not eradicated.

With a view, therefore, to satisfy responsible European sentiment, and to avoid racial animosities being provoked, I have after anxious consideration accepted with some reluctance the proposal to retain the system of trial by mixed jury in certain cases subject, however, to the safeguards contained in the report, and subject also to its extension to Indians in similar circumstances.

While it is necessary that justice should be administered properly, it is also necessary that the accused person, European or Indian, should feel confident that justice is being done to him. That he will not have, if he mistrusts the tribunal. Reasonable apprehensions on his part must carry weight with the Legislature. Who can deny that it is not difficult at present to rouse racial feelings on slight provocation? There is an atmosphere of racial prejudice just at present everywhere. Without deviating from "the principle of equality of status for all people," there must be some safeguards against miscarriages of justice on that account, both for the Indian and the European.

I have on fuller consideration agreed to the course recommended in the report, as I am satisfied that even the most reasonable European is wholly averse to doing away absolutely with this system of trial. The right to appeal against acquittals on fact and law will deprive the verdicts of the jury of their finality. This right and the procedure recommended for recasting the Special Jury List will be strong safeguards against miscarriages of justice in serious cases. The proposal to give a similar right to all accused persons takes away the characteristic of its being a privilege and a peculiar privilege of one community. I frankly admit that this solution is not quite satisfactory, but the more drastic course is bound to create fresh animosities between important communities, which it is necessary to avoid in the interests of good government.

I now propose to deal with the point on which I differ from the recommendations of the majority of the Committee. The Committee propose to extend the right of appealing both on facts and law against all verdicts of jury, whether of conviction or of acquittal, if not unanimous and the Judge agrees, in all cases of trial by jury. I regret I cannot agree to that recommendation. I am willing to impose the risk of an appeal against acquittals both on facts and law as a disability attaching to a claim to a trial by a mixed jury under similar limitations and as a safeguard against an unjust acquittal. I do not see why he should be given the further privilege of appealing against a conviction by a tribunal of his own choice.

In other respects I would leave the law as to appeals in jury trials and against acquittals as it stands at present. Appeals against acquittals are a unique feature in the Indian Criminal Procedure. If it is to be extended at all it should only be on the ground that the accused person brings it on himself by insisting on a particular constitution in the tribunal which tries him. Where the accused person submits to be tried by the courts and tribunals which the State has provided, why should he be exposed to all the risks and expense of a second trial before another distant court? The law as to appeals in ordinary jury cases has worked well so far and there has been no demand for its alteration. The change proposed of allowing appeals on facts and law against all verdicts of the jury including ordinary trials before the court even without the safeguard of the certificate provided in the English Act is so opposed to the prevailing ideas about criminal trials by jury and finality of verdicts that I may confess to a feeling of instinctive dislike to the proposal. If every accused person whether in the Sessions Court or in the High Court convicted in a jury trial is allowed to appeal as in Assessors' cases, the High Courts will be flooded with appeals. To add to it, the Government is to have the right of appeal against all acquittals. That in effect is the recommendation of the majority of the Committee and I am constrained to dissent from the same on grounds aforesaid.

I quite realize that my position allowing an appeal against an acquittal and not against a

conviction is open to the reproach of inconsistency but if my position, namely, — to impose a penalty on a person claiming a mixed jury—is understood, the reproach loses its force. It is as a conditional privilege I will retain the mixed system.

Sentences.

As regards the sentence awardable by a Sessions Court, I would make it uniform, no matter to which nationality the accused belongs. I would obtain the necessary sanction under section 65, cl. 3, of the Government of India Act to enable the Indian Legislature to pass the enactment.

Minor Questions.

Among the minor points on which there is not much difference of opinion or opposition, is the one contained in section 111 of the Criminal Procedure Code, which provides that sections 109 and 110, section 109 being security for good behaviour for vagrants and suspected persons and section 110 being security for habitual offenders, do not apply to European British subjects in cases where they may be dealt with under the European Vagrancy Act of 1874. The European Vagrancy Act is a beneficial measure and there is no reason why it should be repealed. On the other hand, it may be useful to extend a similar protection to Indian vagrants. But as this distinction in favour of European vagrants is not harmful, I do not advocate its abolition. I fail to see as to how cases coming under section 110 can at all come under the European Vagrancy Act, while perhaps section 109, cl. (*b*), may apply to such persons under the Act of 1874. I agree that section 111 should be repealed.

I would abolish all provisions relating to Justices of the Peace except in so far as they may be necessary for Indian States.

If any distinction of privileged Criminal Procedure and Courts is to be maintained at all there is as much reason for extending such privilege to a Zulu or a Colonial—and no object is gained by trying to restrict the definition of 'European British subject.' The more extended the definition of the term, the more patent is the absurdity of this special procedure. The Indian point of view will not be met by restricting or altering the definition of 'European British subject.'

As regards *Habeas Corpus*, it is necessary that all subjects should have the same right as the European British subject, and in fact this is conceded. Sections 456 and 491 may be amended to achieve this end.

The Position Summed Up.

The existing differences owe their origin to a state of things which no longer exists.

They originated at a time when there were two classes of Courts with different systems of law, where the non-official European could settle in the country only by license and there was a conflict between the Company's servants and others. They are mere privileges for which no analogy can be found except in uncivilized systems of law.

They are inconsistent with equal rights now recognized between all classes of His Majesty's subjects and tend to lower the Indian in the eyes of the civilized world. They were discountenanced from the very first by great statesmen and were intended to be given up after the country came completely under British influence and British systems of law.

There has been great advance in education and the Indian is moving in most places on terms of equality with the European.

These privileges are not enjoyed in the adjacent colony of Ceylon nor in French India.

Past experience has shown they are not necessary.

Civil justice is fairly administered by the Indians without discrimination for nearly a century. The fears of the experiment in 1833 have proved to be groundless.

In Presidency-towns criminal justice has always been administered by Indian Presidency Magistrates to all alike without distinction. There has been no complaint that Europeans and Americans have not got these privileges.

So it is not a question of knowledge of language or habits.

In fact, their right to have a jury, which they had under the Code of 1872 was taken away in 1882 and they are amenable to the full jurisdiction of all classes of Criminal and Civil Courts.

There was no right for the European British subject to claim a jury in all Sessions cases before 1884. He could have been and was tried without a jury in Sessions cases under the Code of 1872.

He has no right to claim a jury before a first class Magistrate nor before a Presidency Magistrate. The jury-trial in this country is quite different from the jury-trial in England.

The claim advanced is to a mixed jury with a racial majority.

The cases for which a mixed jury is deemed essential are the very cases in which a jury trial may be said to be unsuited.

Protection against racial bias or political prejudice might be given otherwise, but European opinion is very strong on this point, and it cannot be disregarded.

The objection to Indian first class Magistrates and Judges as such is not now seriously pursued nor can such objection, when it is made, be considered for one minute. The conditions as regards second and third class Magistrates vary in each province and in their cases there should be no legislative declaration that they are incompetent to try particular classes of offenders, those certain offences may be made removable to a first class Magistrate.

The existing general jurisdiction and powers given to Magistrates are too wide and should be curtailed and attempts should be made to improve the magistracy by careful recruitment.

The right of appeal should be extended so as to bring the Indians up to the level of the European British subjects.

In conclusion, it has to be recognized that by the recommendation made by the Committee the Indian gains some very substantial points.

Simla;
The 10th June 1922.

T. RANGACHARIAR.

MINUTE BY Mr. W. L. CAREY, M. L. C.

In signing the Report I have been influenced by the desire, in common with my community, throughout the Committee's deliberations to attain unanimity with the Indian Members in the proposal for the removal of racial distinctions from the Criminal Procedure Code in so far as they constitute racial inequalities. Personally I have approached the problems before the Commission with three main principles in my mind.

Firstly, that it is an essential part of any sound system of Criminal Law that the accused should feel confidence in the tribunal before which he is arraigned and the method of trial.

Secondly, that all reasonable safeguards which are either demanded by Indians or which it otherwise appears would be desirable should be granted to them.

Thirdly, that none of the rights and privileges hitherto enjoyed by Europeans should be taken away from them save for good cause.

These are the principles which I have found actuating all Europeans with whom I have discussed this matter, and it is only fair to state here that the unofficial European Community at informal meetings which were held from time to time has agreed, in violation of the third principle, to give up many of their privileges with a view to an amicable solution. I have not demurred at this withdrawal of many valued rights and privileges enjoyed in the past by Europeans some of which it is recognized are not in consonance with the spirit of the present day, but I have kept before me the essential conditions that the judicial system should justify the confidence of the accused and that safeguards should be provided against ebullitions of feeling which have always been liable to occur, and which at the present time are being directly encouraged by a section of the Indian Community.

The general recognition of the necessity for such safeguards is evidenced in the procedure suggested in the Report whereby the system of mixed Juries, before whom Europeans have been tried in the past, has been extended to members of both races in all warrant cases where racial considerations are involved, whether triable before a High Court or a Sessions Court. In addition to this provision the report advocates the transfer of all warrant cases where racial considerations are involved at the option of the accused person from a Magistrate's Court to a Sessions Court. These safeguards against the influence of racial feelings on the administration of Justice are satisfactory so far as they go, for they conform to the principle first enunciated, and at the same time by ensuring a senior Court for the more complicated cases, in which racial feelings from outside the circle of those implicated may play a part, the proposed safeguards do what is possible to ensure non-interference with the judiciary. These provisions which embody no racial inequalities and infer no reflection on the Magistracy, unless admitted lack of experience in comparison with the Sessions Courts can be so considered, are restricted in application to warrant cases in the Report, and it is at this restriction that I dissent from my Colleagues. Summons cases often involve as much racial feeling as cases of a graver description, and I am of opinion that the safeguards which are admitted to be advisable in warrant cases should be available at the option of the accused in all summons cases where racial considerations are involved and the punishment may embrace imprisonment or a fine of over Rs. 50. The proposal in the report for a mixed Bench composed of two first class Magistrates, one of each nationality, is a recognition of the necessity for some precaution against racial feeling and it is in my opinion illogical to depart from the system put forward for warrant cases and to introduce a procedure which the progressive Indianization of the services may make difficult to maintain. The extra work entailed in Sessions Courts by the extension of the warrant case procedure to summons cases where racial considerations are involved, is likely to be inconsiderable, but the extra confidence which would be inspired in a community, willing to give up many privileges in the interests of racial amity, would be an added guerdon to the friendly relationship which must pervade all parties in the country if the Reforms are to develop smoothly to the declared goal of Constitutional Independence.

The only objection which can arise to the transfer of summons cases to Sessions Courts is in the case of parties of insufficient means to pay for this transfer, and in these instances I would suggest that Government should undertake the expense of the prosecution.

A further point of considerable importance to the European Community is the right of an accused person to give evidence on his own behalf, for, in view of the isolated conditions in which many Europeans find themselves, rendering defence witnesses impossible in cases of prosecution, I am of opinion that this right should be generally accorded to all in order to facilitate the administration of justice. In any legislation therefore resulting from this Report I most earnestly urge that these points on which I know strong opinions are held by many of my countrymen should be embodied not merely as a measure of goodwill towards the section of the community whose legal status is being very considerably lowered but as an addition to the efficiency of the proposed amendments to the Criminal Procedure Code.

With reference to the enquiry which it is understood is still to be held as to the possibility of extending Jury trials in districts where they do not at present exist, I would like to say that it is hoped that this action may be found possible in all districts or at least that if it is not found possible for all districts that it will be extended wherever it is so found possible.

In conclusion I would draw attention to the very considerable advances on many substantial points making for satisfactory justice which Indians as a whole will have made as the result of this Report if it is adopted and as a return for which I trust further it may be found possible still to accord to the European Community the two points dealt with in this Note.

W. L. CAREY.

CALCUTTA;

The 21st June 1922.

MINUTE BY MR. T. C. P. GIBBONS, K. C.

I generally agree with Mr. Carey's Note.

CALCUTTA; THOMAS C. P. GIBBONS.

The 23rd June 1922.

MINUTE BY LIEUTENANT-COLONEL H. A. J. GIDNEY, M. L. A.

As representative of the Anglo-Indian and Domiciled European Committee I have approached the problem with the same objects in view as Mr. Carey, and the proposals in his minute have my support and endorsement.

SIMLA; H. A. J. GIDNEY.

The 24th June 1922.

MINUTE BY MR. JUSTICE SHAH.

I regret that I was unable to attend the final meetings of the Committee at Simla held on and after the 10th June last.

2. I have signed the report subject to this minute, in which I have confined my observations as far as possible to those points, connected with the specific recommendations made in the report about various differential provisions, as to which I have thought it necessary to state something by way of explanation or to express my own view of the matter. In other respects I entirely agree with the recommendations contained in the report.

3. At the outset I desire to state that the removal of the racial distinctions from the Code is necessary and desirable in the best interests of the administration of justice.

4. As regards the definition of European British Subjects I am in entire agreement with the recommendation of the report. I do not think it would be fair to

restrict it to the limited class of persons indicated in section 65 (3) of the Government of India Act (5 and 6 George V, Chapter 61). As regards the inclusion of persons from the Dominions of His Majesty serving in His Majesty's Indian Army, Royal Indian Marine or Indian Air Force I would leave it to the Government of India to decide the point : I would accept their decision.

5. As regards section 22 I am in entire agreement with the recommendations in paragraph 15 of the report. The differential treament will be confined to cases triable by the Second and Third Class Magistrates and even then only to cases which are punishable otherwise than by a fine only of Rs. 50. This is an exception to the general scheme of the recommendations, which appears to me unavoidable under the circumstances, and so far as I have been able to ascertain the Indian opinion on this point as reflected in the evidence before us it will not be objected to.

6. As regards section 111 I agree with the recommendation so far as it goes. But I think that so long as an alternative procedure in the case of Europeans is open under the European Vagrancy Act, the differential treatment in practice will not disappear. I am not in any sense opposed to the scheme of the European Vagrancy Act : but the humane provisions of that Act afford a strong contrast with the somewhat severe provisions of Chapter VIII as regards the preventive punishments. The real remedy to remove the differential treatment in practice as in law is to modify the penal provisions of Chapter VIII in the Code. Even apart from this consideration experience has shown that these preventive provisions are at times used for punitive purposes. In order to reduce the chances of their being so used, as also to reduce the chances of differential treatment, I think that it is desirable to reduce the maximum sentence of three years to one year and to provide that the imprisonment to be inflicted in case security be not furnished shall be simple. If the object is merely prevention and not punishment, I think detention for a period not exceeding one year may well be considered sufficient. If necessary the local Governments and High Courts may be consulted on the point.

7. As regards section 408, I agree with the recommendation in the report so far as it goes ; but I suggest a modification of proviso (*b*), so far as it relates to Magistrates exercising powers under section 30 of the Code. I shall state my reasons for repealing section 30 when I come to deal with that section hereafter.

8. As regards sections 413, 414, 415 and 416, I am in favour of the recommendations so far as they go. As regards the sentence of whipping I am not in favour of its total repeal, but would restrict it to certain cases as suggested in the report. My opinion as to appeals from sentences of whipping is in accordance with what is described in the report as the opinion of the majority. I desire to make it clear that the opinions that are to be called for should be called for on the footing that the provisions as to the appealability of sentences are to be uniform as regards all European British Subjects as well as others. I would not allow any considerations of increase in work or of alteration in the existing division of work, to weigh against the desirability of making the right of appeal uniform.

9. As regards section 418, I am of opinion that there should be a full right of appeal on fact and law in cases tried in the High Court as well as in the Sessions Courts, quite independently of the consideration, whether the verdict is unanimous or not and whether the Judge has agreed with the verdict or not. In the High Court the Judge is bound by unanimous verdicts and in the Sessions Courts there is no scope for appeal where he differs, as those cases would be referred to the High Court under section 307. I shall deal with this point further when I come to deal with the questions relating to trials in these Courts. I desire to note here that I fully admit that such a right of appeal detracts to a certain extent from the value of jury trials ; but in England such a limitation is recognized in the interests of justice. Unless we can get rid of jury trials altogether, which I think we cannot do and ought not to do, I am of opinion that this right of appeal both from convictions and acquittals as an integral part of the system as a necessary safeguard against possible miscarriages of justice in jury trials is essential or at any rate unavoidable.

10. As regards section 446, I agree with the recommendation so far as it goes. But in two particulars I am unable to agree with the report. I think the Court

should have exactly the same powers as to whipping while punishing a European British subject as it has as regards other persons. I have already indicated that the sentence may be made appealable. But on principle and on general grounds of the administration of justice I am opposed to investing the same Court with different powers on any point according to the nationality of the accused. If no satisfactory solution of this question be possible on the lines I have indicated, I would much sooner repeal the sentence of whipping than leave any ground for complaint on the part of Indians on this point.

10(*a*). The second point in connection with this section relates to the differential treatment arising out of the provisions of section 30 in the areas to which that section applies. I am in entire agreement with the recommendation in the report that the Magistrates empowered under section 30 should not have power to sentence European British Subject beyond their ordinary powers. But I am entirely opposed to the retention of section 30 on the Statute Book. It is not reasonably possible to make it uniformly applicable to all persons including European British Subjects. I think the European British Subjects will protest, and in my opinion quite rightly, against any such proposal. The only other alternative is to repeal it. I think the section deprives an accused person of many important safeguards. which he has in cases triable by Sessions Courts. It deprives the accused of jury or assessors; and it substitutes a District Magistrate or a First Class Magistrate specially empowered by the Government for a Sessions Judge, an additional Sessions Judge or an Assistant Sessions Judge. A District Magistrate or a First Class Magistrate specially empowered may not be, oftentimes would not be an exclusively judicial officer, like the Sessions Judge or Additional Sessions Judge or Assistant Sessions Judge, and would not ordinarily be an officer of the same rank and judicial training as the latter. By investing a District Magistrate and a First Class Magistrate with such extensive powers under the Code the accused are deprived of some of the most effective safeguards in a criminal trial in a Sessions Court. I do not see how its retention can be justified, except on grounds of administrative convenience, which I think ought not to be allowed to weigh against considerations of judicial propriety. I wish to make it clear that I am entirely in favour of its repeal and do not wish to see it extended to one single person more than those to whom it effectively applies at present. I would therefore recommend the repeal of sections 30 and 34 and corresponding modifications in other sections of the Code where sections 30 may have been referred to.

11. As regards section 449, I would recommmend its repeal altogether. I entirely agree with the recommendation so far as it goes. But I would make no exception as regards the sentence of whipping. The reasons stated above in paragraph 10 apply with greater force to Sessions Courts. I am unable to see any justification for such an exception in the case of Sessions Courts, which we recommend should have powers to inflict the highest penalty known to law upon all alike.

11(*a*). As regards the sanction required under section 65 (3) of the Government of India Act, I desire to express my agreement with the recommendation in the report and to point out that under the existing law every death sentence is subject to confirmation by the High Court. The provisions of Chapter XXVII (sections 374—379) of the Code of Criminal Procedure define the powers and the duties of the High Court in such cases.

12. The next point relates to section 450, about trials by jury. Generally speaking I am in agreement with the recommendations contained in paragraph 25 of the report. I desire to make it clear that I prefer the composition of jury on non-racial lines, if it were reasonably possible. But it appears from the evidence that the European British Subjects are so keen on this question that they would rather have no jury than a jury other than a mixed jury. They feel rightly or wrongly that they would not get just verdicts from juries otherwise composed. I do not consider it fair or desirable to deprive them of the benefit of the system to which they are used so long, and in which they have faith. By giving to the other subjects also a corresponding right in trials before the High Courts by amending section 275, the plea of racial inequality will be met. But the complaint as to miscarriages of justice under that system remains. In order to meet that the right of appeal should be extended in jury cases. I have already stated that the right of appeal should

extend to all jury cases including cases in which juries are unanimous. The right of appeal is an integral part of our recommendations on this point : and I consider it inconsistent with that scheme to limit the right of appeal as suggested in the report. Without expressing any opinion as to how far the alleged miscarriages of justice are attributable to the system of mixed juries, on general grounds as well as the special grounds applicable to the particular matter of racial distinctions which we have to consider, I should think it necessary to have a full right of appeal on fact and law in all Sessions cases whether before the High Court or the Sessions Courts. As regards Sessions Courts, I consider the present provisions as to references to the High Court under section 307 also an integral part of this recommendation as a safeguard against any miscarriages of justice in trials by jury, quite independently of the composition of the jury.

12(*a*). As regards the number of jurors in murder cases, I consider it desirable to have a larger number : but I would make the recommendation more elastic. I attach greater importance to the mode of trial than to the number of jurors and I would not allow the difficulty of giving effect to our recommendation as to the number of jurors in murder cases to be treated as a possible ground for changing the mode or place of trial in such cases. I would be satisfied with 5 or 7 where the conditions of the District would not allow so many as nine jurors for one trial.

13. As regards the recommendations in paragraph 26 of the report, I agree that they remove the existing element of racial inequality in the trials ; but they do not remove the element of racial distinctions. As my general outlook on this question is somewhat different, it is best that I should state what appears to me to be a fair and a preferable solution of this difficult question.

13(*a*). As regards the trials, before High Courts, there is no difficulty, as the same uniform system of trial by jury obtains at present. The only distinction is as to its composition which will be removed, if section 275 is amended as suggested.

13 (*b*). As regards trials by Sessions Courts under the existing law they are held with the aid of Assessors to a large extent. The jury system is accepted to a limited extent. In short the European British Subjects have a right to claim a trial by jury whereas others have no such right except in the Districts and classes of cases determined by the local Governments for that purpose under the powers vested in them under section 269 of the Code. It is possible to remove this distinction in various ways : we may abolish juries altogether, or limit the right of the European British Subjects to trial by jury as in the case of Indians or extend the jury system to all alike. The first alternative appears to me to be quite out of the question under the existing public opinion both European and Indian. The second alternative leaves the trials with the aid of assessors as they are, in the case of non-Europeans and seriously curtails the present right of trial by jury in the case of European British Subjects. As regards the system of assessors the evidence before us such as it is is not in favour of that system. This much is clear that the system affords no effective constitutional safeguard, as it is open to the presiding Judge to accept or to reject their opinions as he likes. I think myself that assessors are an aid to the Court, and the system implies a recognition of the principle that in serious criminal cases (*i.e.*, Sessions cases) it is necessary or desirable to associate laymen with the trained Judge to be able to do justice to the case from all points of view. But as a system, it cannot be accepted as anything like a fair substitute for the jury system by way of safeguards in criminal trials. I have already stated my view that I am not in favour of depriving the European British Subjects of their right to trial by jury in Sessions cases ; and as the second alternative involves that result, I am not in favour of it. I prefer the third alternative. I would allow to non-Europeans the right to be tried by jury as is allowed to European British Subjects. I admit that this is a controversial subject. Differences of opinion on the point are inevitable. I have considered the question from all points of view to the best of my ability in the light of my experience. I have not overlooked the consideration that in certain classes of cases, as for example in cases relating to offences against the State, murder cases, and gang cases relating to offences under Sections 400 and 401, Indian Penal Code, there may be certain inconveniences and risks in jury trials. I do not think, however, that on balancing the considerations for and

against the system, there is any valid reason to apprehend that the system will not work well. I think that the power of the Sessions Judges to refer cases to the High Court under Section 307 and the full right of appeal on fact and law in all Sessions cases whether before the High Court or the Sessions Courts afford adequate safeguards against all possible risks and inconveniences of this system. Personally I see no insuperable difficulty in the way of adopting that alternative. On the contrary, I see distinct advantages in adopting it. It is my belief that if this alternative be adopted, the present opposition to mixed juries on the one hand and keenness for them on the other will disappear, and it will be possible to dispense with mixed juries altogether in course of time. I cannot deal with all considerations for and against this proposal in this minute. But after all, it is largely a matter of opinion and I have stated my opinion : after a full consideration of the question in its theoretical and practical aspects, I consider it a practicable and sound proposition. I desire to refer to one point in particular. I am not sure whether the adoption of this system will entail any appreciable extra cost : at any rate the increase in expenditure does not appear to me to be an inevitable result of the change proposed. There are no materials before the Committee on this aspect of the question. But assuming that it will involve an appreciable increase in expenditure, I think that no question of costs should deter the Government of India from adopting this measure, which, in my opinion, is calculated to improve the administration of criminal justice and to enhance the confidence of the public in that administration. The resulting contentment among the people will amply repay the extra costs, if any, that this mode of trial may involve. I would recommend that the same uniform mode of trial by jury in the Sessions Courts be adopted in British India applicable alike to European British Subjects and others, subject, of course, to the safeguards already indicated against the possible inconveniences and risks of trials by jury, *viz.*, the power of the presiding Judge outside the Presidency Towns to refer the case to the High Court when he thinks it necessary to do so, and the full right of appeal to the Crown and to the accused in all Sessions cases. If on any special grounds it be not feasible to introduce this system in some parts of British India, I am unable to see any reason why it should not be extended to the rest of British India.

13 (*c*) If for any reason this alternative cannot be accepted, I think (speaking with respect and deference) that the recommendations in the report afford the next best solution of this difficult question.

14. As regards trials by Magistrates, in warrant and summons cases, I prefer the simple plan of trusting the First Class Magistrates in the case of British European Subjects in the same manner as they are trusted in the case of others. In the Presidency towns no distinction is observed, as regards the powers of the Presidency Magistrates either to try or to inflict sentences upon accused persons whether European British Subjects or not : and in the mofussil as regards First Class Magistrates who exercise virtually the same powers as the Presidency Magistrates, I see no sufficient reason to observe any distinction, nor do I see any compelling reason to introduce the element of ' racial considerations ' in these trials. But here again it is largely a matter of opinion. Personally I am in favour of trusting the First Class Magistrate in the same manner as the Presidency Magistrates particularly as in the case of the former the right of appeal is more extensive and will be further extended according to our recommendation. This right of appeal is a sufficient safeguard. But if this be not accepted, I think (with due respect) that the recommendations in the report as to the mode of trial constitute the next best solution of this question.

15. As regards the results indicated in the tabular form in the report, they would be subject to such changes as I have indicated in this minute. In brief, according to my suggestions there will be no racial distinctions left in the Code except as to the trials by Second and Third Class Magistrates of cases which are punishable otherwise than by a fine of Rs. 50 only.

16. In conclusion, I desire to add that I consider it a matter of great importance to have uniformity of procedure in criminal trials as regards all persons, whether European British Subjects or not. It does not matter so much what particular line

is adopted in altering the existing provisions with a view to have such unformity. If once the uniformity of procedure is secured, I have no doubt that in future both Europeans and Indians will be interested alike in seeing that the defects in procedure, which experience may disclose hereafter are removed. It will be a great help to the administration of justice to have community of interest instead of separation as at present, as regards the rules of procedure, in criminal trials.

BOMBAY ; L. A. SHAH.

Dated the 25th July 1922.

MINUTE BY DR. H. S. GOUR, M. L. A.

(1) While I am most anxious to placate the sentiments of English residents in this country, I can not help observing that the compromise embodied in the report will not ensure racial equality, but tend rather to perpetuate racial inequality. When the Legislature was practically in the hands of the Executive the people's representatives could well disclaim their responsibility for such inequality. But now with the elected majorities in the two Houses their responsibility is greater, and it is that sense of responsibility that has impelled me to pen this minute.

(2) I recognize the practical difficulty of eliminating all racial distinctions *per saltum*. It is a heritage of the past which we can only slowly shake off. But we must make a reasonable advance in this direction.

(3) I agree with my colleagues that the definitions of " European British subject " both in the Government of India Act, and in Section 4 (1) of the Code of Criminal Procedure are unsatisfactory ; but I do not agree with my colleagues in their proposed amendment of that definition. And my reasons are these :—

(*i*) I think that both the definitions proceed from a wrong standpoint, and are not in accord with constitutional law.

(*ii*) It seems to me that European British Subjects who make India their permanent home cannot insist upon the preservation of their right of exterritoriality. Having chosen India as their home they must submit to its ordinary laws.

(4) The case of temporary visitors and dwellers is different, and though there is no reason why they should not equally submit to the ordinary British laws here, as they do in a crown colony like Ceylon, and in a foreign Asiatic country like Japan, still we might, as a concession to our weaker brethren, suffer them differential treatment.

I would then limit the term " European British Subject " to mean—

" any natural born subject of His Majesty born and domiciled in the United Kingdom of Great Britain and not permanently resident in India."

(5) I regret it, but I must I suppose agree to colonial officers with the British Army in India being also treated as falling within the definition of European British Subjects.

(6) Regarding the right of appeal against convictions I think there is a great deal in Mr. Rangachariar's view, namely, that where the accused does not claim a special mixed jury there should be no appeal except against an acquittal.

(7) Referring to Section 26 (*ii*) I am not prepared to subscribe to the presumption there made that in a case arising between a European and an Indian racial considerations shall be deemed to arise.

NAGPUR, H. S. GOUR.

Dated the 29th July 1922.

APPENDIX A.

LIST OF WITNESSES WHO GAVE EVIDENCE BEFORE THE COMMITTEE.

1. Mr. J. Chaudhuri, Bar-at-Law, M.L.A., representing the Indian Association, Calcutta	16th January.
2. Mr. P. Kennedy, Bar-at-Law, Chairman, European Association, Bihar Branch, and also representing the Bihar Planters' Association, Muzaffarpore	17th January.
3. Mr. R. G. Pradhan, B.A., LL.B., High Court Vakil, Nasik, Bombay Presidency	18th January.
4. Mr. M. Barkat Ali, M.A., LL.B., Vakil, High Court, Lahore, and Vice-President, Punjab Provincial Muslim League, Lahore	
5. Mr. D. W. Kathalay, B.A., LL.B., Pleader, Nagpur	
6. Pandit Gobind Prasad Dube, Pleader, Hoshangabad, Central Provinces	
7. Mr. Arikshan Sinha, Pleader, Judge's Court, Muzaffarpur	19th January.
8. Mr. Tehlram Gangaram, Honorary Secretary, National Liberal Association, Punjab and North-West Frontier Province, Dera Ismail Khan	
9. Mr. Satya Chandra Mukerji, M.A. LL.B., Advocate, High Court, Allahabad	21st January.
10. Dr. Annie Besant, Adyar, Madras	
11. Mr. Mahomed Yunus, Bar-at-Law, M.L.C., Patna	
12. Mr. G. W. Dillon, Bar-at-Law, Allahabad	23rd January.
13. Mr. Sambanda Mudaliar, M.L.A.	
14. The Hon'ble Sir A. H. Froom, Member of Council of State	24th January.
15. Mr. H. C. Desanges, Bar-at-Law, Bareilly, United Provinces, representing the Anglo-Indian and Domiciled European Association, India	
16. Mr. W. J. Keith, C.I.E., M.L.A., Divisional Commissioner, Burma	25th January.
17. Mr. Rustomji Faridoonji, M.L.A., Deputy Commissioner, Central Provinces	
18. Dr. S. Swaminadhan, Bar-at-Law, Madras	26th January.
19. Mr. S. Satyamurti, High Court Vakil, Madras, representing the High Court Vakils' Association, Madras	
20. The Hon'ble Syed Raza Ali, Allahabad, Member of the Council of State	27th January.
21. Mr. C. O. Remfry, Bar-at-Law, Calcutta, representing the European Association, Calcutta	
22. Mr. N. C. Ghose, Bar-at-Law, Bhawanipore, Calcutta	28th January.
23. Mr. J. Langford-James, Bar-at-Law, Calcutta	
24. Mr. D. G. Dalvi, Hight Court Vakil Bombay	
25. Mr. A. P. Sen, Bar-at-Law, Lucknow	
26. Syed Wazir Hasan, Advocate, Lucknow	

LIST OF THOSE WHO WERE INVITED TO GIVE EVIDENCE BEFORE THE COMMITTEE, BUT WHO WERE UNABLE TO DO SO.

1. Mr. Ross Alston, Bar.-at-Law, Allahabad.
2. Mr. Surendranath Mallick, M.L.C., representing the Indian Association, Calcutta.
3. Mr. T. V. Gopala Swami Mudaliar, B.A., B.L., High Court Vakil, Madras.
4. Mr. P. Ramanathan, B.A., Solicitor and Attorney-at-Law, Chintradipet, Madras.
5. Mr. Bhulabhai Desai, Advocate, Bombay.
6. Mr. D. B. Binning, Bar.-at-Law, Bombay.
7. Mr. A. K. Fazlul Haq, Calcutta.

APPENDIX B.

EVIDENCE BEFORE THE COMMITTEE.

Written evidence of the Indian Association, Calcutta.

Oral evidence of Mr. J. Chaudhuri, Bar.-at-Law, M.L.A., representing the Indian Association, Calcutta.

Written evidence of the European Assocation, Bihar Branch, Muzaffarpur.

Written evidence of Mr. P. Kennedy, Bar.-at-Law, Chairman, the European Association, Bihar Branch, Muzaffarpur.

Oral evidence of Mr. P. Kennedy, Bar.-at-Law, Chairman, the European Association, Bihar Branch, Muzaffarpur.

Written evidence of Mr. R. G. Pradhan, B.A., LL.B., Vakil, High Court, Nasik.

Oral evidence of Mr. R. G. Pradhan, B.A., LL.B., Vakil, High Court, Nasik.

Note by Mr. R. G. Pradhan, B.A., LL.B., Vakil, High Court, Nasik, on the definition of European British subject.

Oral evidence of Mr. Barkat Ali, M.A., LL.B., Vakil, High Court, Lahore, and Vice-President, Punjab Provincial Muslim League, Lahore.

Written evidence of Mr. D. W. Kathalay, B.A., LL.M., Pleader, Nagpur.

Oral evidence of Mr. D. W. Kathalay, B.A., LL.M., Pleader, Nagpur.

Oral evidence of Pandit Gobind Prasad Dube, Pleader, Hoshangabad.

Written evidence of Mr. Arikshan Sinha, Pleader, Muzaffarpur.

Oral evidence of Mr. Arikshan Sihna, Pleader, Muzaffarpur.

Oral evidence of Mr. Tehlram Gangaram, Honorary Secretary, National Liberal Association, Punjab and North-West Frontier Province, Dera Ismail Khan.

Oral evidence of Mr. Satya Chandra Mukerjee, Advocate, High Court, Allahabad.

Written evidence of Dr. Annie Besant.

Oral evidence of Dr. Annie Besant.

Oral evidence of Mr. Mahomed Yunus, Bar.-at-Law, M.L.C., Patna.

Oral evidence of Mr. G. W. Dillon, Bar.-at-Law, Allahabad.

Oral evidence of Mr. Sambanda Mudaliar, M.L.A.

Oral evidence of the Hon'ble Sir A. H. Froom, Member of the Council of State.

Written evidence of the Anglo-Indian and Domiciled European Association, India.

Oral evidence of Mr. H. C. Desanges, Bar.-at-Law, Bareilly, representing the Anglo-Indian and Domiciled European Association, India.

Oral evidence of Mr. W. J. Keith, C.I.E., M.L.A., Commissioner, Burma.

Oral evidence of Mr. Rustamji Faridoonji, M.L.A., Deputy Commissioner, Central Provinces.

Oral evidence of Dr. S. Swaminadhan, Bar.-at-Law, LL.D., Vakil, High Court, Madras.

Written evidence of the Madras High Court Vakils' Association.

Oral evidence of Mr. S. Satyamurti, High Court Vakil, Madras, representing the High Court Vakils' Association, Madras.

Oral evidence of the Hon'ble Sayed Raza Ali, Allahabad, Member of the Council of State.

Written evidence of the European Association, Calcutta.

Oral evidence of Mr. C. O. Remfry, Bar.-at-Law, Calcutta, representing the European Association, Calcutta.

Oral evidence of Mr. N. C. Ghose, Bar.-at-Law, Bhawanipore, Calcutta.

Written evedence of Mr. Jhon Langford-James, Bar.-at-Law, Calcutta.

Oral evidence of Mr. John Langford-James, Bar.-at-Law, Calcutta.

Draft questions prepared by Secretary, Racial Distinctions Committee.

Written evidence of Mr. D. G. Dalvi, High Court Vakil, Bombay.

Oral evidence of Mr. D. G. Dalvi, High Court Vakil, Bombay.

Oral evidence of Mr. A. P. Sen, Bar.-at-Law, Lucknow.

Oral evidence of Mr. Wazir Hasan, Advocate, Lucknow.

Written evidence of the Karachi Chamber of Commerce.

Written evidence of the Chamber of Commerce, Bombay.

Written evidence of the Anglo-Indian Association of Southern India, Egmore, Madras.

Written evidence of the Mahajana Sabha, Madras.

Written evidence of the Burma Chamber of Commerce.

Written evidence of the Anglo-Indian and Domiciled European Association, Bengal.

Written evidence of Mr. P. Ramanathan, B.A., Solicitor and Attorney-at-Law, Chintadripet, Madras.

Written evidence of Mr. Hafiz Muhammad Adubl Rahim, *ex*-Pleader, Aligarh.

Written evidence of the Bombay Presidency Trades Association, Bombay.

Written evidence of the European Association, Sind Branch, Karachi.

Written evidence of the Upper India Chamber of Commerce.

Written evidence of the Anglo-Indian and Domiciled European Association, Burma, Rangoon.

Written evidence of Bengal Landholders' Association, Calcutta.

Written evidence of Calcutta Trades Association.

Written evidence of the Indian Merchants' Chamber and Bureau, Bombay.

Written evidence of the European Association, Bombay Branch, Bombay.

Written evidence of Captain C. C. Armitage, Indian Army Reserve of Officers, Calcutta.

Written evidence of Mr. J. R. Gharpure, B.A., LL.B., Pleader, High Court, Bombay.

Written evidence of Lieutenant G. Sircar, M.A., B.L., Vakil, High Court, Calcutta.

Written evidence of Mr. D. C. Sen, retired Deputy Magistrate, Brahmanbaria.

Written evidence of Mr. Anis Ahmed Abbasi.

Written evidence of the Bengal National Chamber of Commerce.

Written evidence of the Bombay Presidency Association, Bombay.

Written evidence of the Landholders' Association, Bhagalpore.

Written evidence of the British Indian Association, Calcutta.

Further written evidence of the Anglo-Indian and Domiciled European Association, India.

Written evidence of Mr. C. T. Dalal, Special Engineer, Hyderabad, Deccan.

Written evidence of the Hon'ble Saiyid Zahiruddin, Bankipore, Member of the Council of State.

Further written evidence of the Anglo-Indian and Domiciled European Association, Bengal.

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